United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

-34

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JOINT APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA

CIRCUIT

Case No. 18991

RAYMOND WARRENNER,
t/a BLUE LINE SIGHTSEEING COMPANY,

Petitioner

V.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Respondent

PETITION TO REVIEW AND SET ASIDE ORDERS OF
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

INDEX

JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA
CIRCUIT

Raymond Warrenner, t/a Blue Line Sightseeing Company, Petitioner	)	
v.	)	Case No. 18991
Washington Metropolitan Area Transit Commission, Respondent	)	

PETITION TO REVIEW
AND SET ASIDE ORDERS OF
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

Comes now Raymond Warrenner, trading as Blue Line Sightseeing Company, by its undersigned attorneys, and petitions the Court as follows:

1. This is a petition to review, enjoin, suspend and set aside orders of the Respondent, Washington Metropolitan Area Transit Commission, served September 11, 1964, and October 27, 1964, made Appendices B and C, respectively, and incorporated herein, arising out of the proceeding entitled In the Matter of Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity, Application No. 58, Docket No. 39. This Court has jurisdiction by virtue of Title I, Article XII, Section 17(a) of the Washington Metropolitan Area Transit Regulation Compact, approved by Congress, Public Law 86-794, 74 Stat. 1031, as amended. The instant petition is filed pursuant to U.S. Ct. of App. D.C. Cir. Rule 38, 28 U.S.C.A.

2. Pursuant to the "grandfather" provision of Title I, Article XII, Section 4(a) of the Compact, Petition, Raymond Warrenner, trading

as Blue Line Sightseeing Company, seasonably filed an application to the Washington Metropolitan Area Transit Commission on June 20, 1961, seeking a certificate of public convenience and necessity to authorize continuation of certain sightseeing and charter operations in which he was engaged on and prior to March 22, 1961, the effective date of the Compact. The applicant sought authority to transport passengers for hire (1) in sightseeing operations between points and places within the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia.

STATEMENT OF ORIGINAL PROCEEDINGS

3. More than a year after the filing of the application, the Executive Director of the Commission by letter of October 25, 1962, notified applicant that his application had been timely filed, that the Commission had begun to process the application, that a broad summary of the authority sought had been published in a District of Columbia newspaper on October 19, 1962, and that protests to the granting of the application could be filed with the Commission within thirty days after publication of notice. The A.B.& W. Transit Company, the W.V.& M. Coach Company and the D.C. Transit System, Inc. protested the application. Subsequently after several informal conferences had failed to resolve issues raised by the application and protests, the Commission ordered the matter to formal hearing.

4. Hearing on the application was held in Washington, D. C., on May 15, 1963 before Russell W. Cunningham as Presiding Officer. The applicant and two others testified in behalf of the application. There was no evidence in opposition thereto except the submission of a transcript of a hearing before the State Corporation Commission of the Commonwealth of

Virginia by counsel for the A.B.& W. Transit Company, without objection. The parties waived an examiner's report.

5. On March 9, 1964 the Commission served its Order No. 342, finding that Warrenner was bona fide engaged in transportation on the grandfather date as follows:

> "IRREGULAR ROUTES
>
> (a) Charter operations:
> Between points and places within the District of Columbia
>
> (b) Special Operations:
> Sightseeing or pleasure tours:
> From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia and return."

In reaching this conclusion the Commission said:

> "The Commission is of the opinion that it need not determine whether the two intrastate operations were "corresponding" and/or whether they could be tacked together to qualify under the Interstate Commerce Act's commercial zone exemption. Even if Warrenner's position is wrong legally, and we are not prepared to say that it is, we are of the opinion that Warrenner began the operation in good faith under "color" of authority; that his movements were open and undisguised and the transportation was rendered in his own vehicles, clearly painted, marked, and identified as belonging to him, and therefore that he was bona fide engaged in the transportation hereinafter authorized on March 22, 1961."

Order No. 342 is attached as Appendix A.

6. While Order No. 342 granted to Petitioner less authority than he had asked for in his application, he was content to accept it. However, the three protestants filed petitions for reconsideration and oral argument on March 25 and April 9, 1964. By Order No. 351 the Commission granted

reconsideration and ordered oral arguments before the full Commission, which arguments were held May 22, 1964.

7. On September 11, 1964 the Commission served its Order No. 384. Its decision noted that protestants did not contest that applicant was in fact operating motor buses in special operations between points in the District of Columbia and certain points in Northern Virginia on the effective date of the Compact, but argued, however, that applicant was not bona fide engaged in motor bus operations in interstate commerce between points in the District of Columbia and points in Northern Virginia on the effective date of the Compact. In a complete reversal of its earlier decision, the Commission held that the commercial zone exemption from regulation by the Interstate Commerce Commission provided by Section 203 (b)(8) of the Interstate Commerce Act applies only in situations where the intrastate operations of the applicant in the two jurisdictions here involved (Virginia and the District of Columbia) are "corresponding intrastate operations." It concluded that since applicant's District rights were for irregular route, sightseeing and charter operations within the District of Columbia and his Virginia rights were for restricted, regular route, round-trip only operations, they were not "corresponding" rights within the meaning of the decision of the Interstate Commerce Commission in A.B.& W. Transit Company v. D.C. Transit System, Inc., 83 M.C.C. 547, 14 Fed. Car. Cases, par. 35,000, and hence it must be concluded that the interstate operations alleged were not lawful prior to March 22, 1961, the grandfather date.

Having found the grandfather date operations between the District of Columbia and Virginia were not exempt and therefore not lawful under the Interstate Commerce Act, the Commission then reached the further conclusion that an operation which was not lawful could not in the legal sense be

"bona fide", citing Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964). It thereupon set aside and held for naught its earlier Order No. 343 and granted a certificate to Warrenner authorizing only operations within the District of Columbia. Order No. 384 is attached as Appendix B.

8. On October 9, 1964 Petitioner then moved for reconsideration of Order No. 384. By Order No. 403, served October 27, 1964 to be effective November 1, 1964, the petition for reconsideration was denied. Order No. 403 is attached as Appendix C. Petitioner then filed a Motion to Stay the effective date of Order No. 403 and this motion is still pending with the Commission.

9. The Commission's Orders Nos. 384 and 403 in Application No. 58, Docket No. 39, are erroneous and void for the following reasons:

(a) The Commission exceeded its jurisdiction under the Washington Area Transit Regulation Compact, Title I, Article XII, Section 4(a)(Public Law 86-794, 74 Stat. 1031, as amended) in that it held certain interstate operations of petitioner conducted under authority from the State Corporation Commission of the Commonwealth of Virginia and pursuant to the commercial zone exemption of Section 203(b)(8) of the Interstate Commerce Act, to be unlawful notwithstanding the failure of either the State Corporation Commission or the Interstate Commerce Commission to make any such finding.

(b) The Commission erred as a matter of law in holding that interstate operations conducted by petitioner were outside the scope of the commercial zone exemption of Section 203(b)(8) of the Interstate Commerce Act, and, hence, unlawful.

(c) The Commission erred in failing to find, in the alternative, that even if petitioner's operations were technically unlawful on the critical

"grandfather" date (March 22, 1961), they were nevertheless conducted under color of right and in good faith, and thus bona fide within the meaning of Section 4(a) of the Compact.

(d) The Commission's action in refusing to issue a certificate to petitioner for interstate operations between the District of Columbia and points in Virginia is contrary to the intent of Congress in consenting to the Washington Metropolitan Area Transit Regulation Compact, in that established carriers such as petitioner were the very ones intended to be protected by the "grandfather" clause.

PRAYER

WHEREFORE, Petitioner prays:

1. That the United States Circuit Court of Appeals for the District of Columbia Circuit enjoin the effectiveness of the Orders of the Washington Metropolitan Area Transit Commission served September 11 and October 27, 1964 in Application No. 58, Docket No. 39;

2. That upon consideration of the merits, such Court enjoin, set aside, annul and suspend those Orders and decree that Petitioner is entitled to authority from the Commission as originally granted in Order No. 342, served March 9, 1964;

3. That the Court direct the Washington Metropolitan Area Transit Commission to issue to Raymond Warrenner, t/a Blue Line Sightseeing Company, a certificate of public convenience and necessity authorizing the service granted by it in Order No. 342, served March 9, 1964.

4. That the Court grant such other and further relief as may be lawful, just and proper in the premises.

Respectfully submitted,

Raymond Warrenner, t/a Blue
Line Sightseeing Company

Warren Woods

David C. Venable

Attorneys for Petitioner

APPENDIX A

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 342

IN THE MATTER OF: Served March 9, 1964

Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity.) Application No. 58

Docket No. 39

APPEARANCES:

WARREN WOODS AND DAVID C. VENABLE, attorneys for applicant;

MANUEL J. DAVIS, attorney for W. V. & M. Coach Company, Inc., protestant;

S. HARRISON KAHN, attorney for A. B. & W. Transit Company, protestant;

JOHN R. SIMS, JR. AND C. ROBERT SARVER, attorneys for D. C. Transit System, Inc., protestant.

Presiding officer: Russell W. Cunningham.

Pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact (Compact), Raymond Warrenner, t/a Blue Line Sightseeing Company (Warrenner or applicant), seasonably filed an application for a "grandfather" certificate to authorize the transportation allegedly engaged in on March 22, 1961, the effective date of the Compact. The applicant seeks authority to transport passengers for hire (1) in sightseeing operations between points and places in the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. The A. B. & W. Transit Company, the W. V. & M. Coach Company, and the D. C. Transit System, Inc., protested the application. Subsequently, several informal conferences were held in an attempt to resolve issues raised by the application and protests. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing.

A transcript of the hearing consists of 113 pages, and 1 exhibit proffered by the applicant. The applicant and two other persons testified in behalf of the application. There was no evidence in opposition thereto except for a transcript of a hearing before the State Corporation Commission of the Commonwealth of Virginia, submitted by counsel for the A. B. & W. Transit Company, without objection.

Prior to 1958, Warrenner had transported passengers in sightseeing operations in limousines in the District of Columbia and suburban areas. In 1958, the applicant filed an application for a certificate of public convenience and necessity to authorize sightseeing operations in the Metropolitan Area before the Interstate Commerce Commission. On July 17, 1958, the Interstate Commerce Commission denied Warrenner's application and, in addition, held that he could not engage in sightseeing operations in interstate commerce in the Washington commercial zone because he did not have the requisite intrastate authority from the Commonwealth of Virginia. Subsequently, Warrenner purchased an 11-passenger bus, and in 1959, a 44-passenger bus. These buses were licensed in the District of Columbia and entitled Warrenner to engage in irregular route sightseeing and charter operations within the District of Columbia. In February, 1959, the State Corporation Commission of Virginia issued Warrenner two certificates of public convenience and necessity, authorizing him to furnish intrastate sightseeing operations between "places mentioned and over routes described" in an appendix attached thereto. The geographic area covered by those two certificates included portions of Arlington County, the City of Alexandria, and Fairfax County, Virginia.

Warrenner testified that in his opinion he was qualified to perform sightseeing operations in interstate commerce within the Washington commercial zone. He further testified, and offered an exhibit to substantiate his testimony, that he was conducting on March 22, 1961, sightseeing operations within the District of Columbia, from the District of Columbia to Virginia, from Maryland to the District of Columbia and Virginia, and from Virginia to the District of Columbia. He further testified that his two vehicles were properly licensed in the District of Columbia and Virginia, but that he had never had Maryland license nor any operating authority from the Interstate Commerce Commission. He also testified that he had, on the effective date and prior thereto, conducted charter operations within the District of Columbia.

The protestants do not contest the application insofar as it relates to charter operations within the District of Columbia, nor do they contest that Warrenner is entitled to sightseeing authority in the District of Columbia. They do contend that Warrenner was not bona fide engaged in <u>interstate</u> sightseeing operations. The protestants argue that while the applicant had an unlimited irregular route sightseeing authorization in the District of Columbia, his authority from the State of Virginia was extremely

limited, confining him to originating passengers only at two motels specified in the Virginia certificates, transporting them only along the routes described therein and returning to the two named motels. They argue further that this prohibits Warrenner from originating passengers any place other than the two named motels. They further contend that this is not the corresponding intrastate authority contemplated under Section 203(b)(8) of the Interstate Commerce Act which exempts carriers from the certificate requirements of said Act if they have the corresponding authority to operate over the entire length of that route or territory in each State.

On the other hand, Warrenner argues that he does qualify for the exemption in that the Virginia routes touch the District of Columbia at several points and that this permits him to "tack" the two authorities together and qualify under the exemption.

The Commission is of the opinion that it need not determine whether the two intrastate operations were "corresponding" and/or whether they could be tacked together to qualify under the Interstate Commerce Act's commercial zone exemption. Even if Warrenner's position is wrong legally, and we are not prepared to say that it is, we are of the opinion that Warrenner began the operation in good faith under "color" of authority; that his movements were open and undisguised and the transportation was rendered in his own vehicles, clearly painted, marked, and identified as belonging to him, and therefore that he was bona fide engaged in the transportation hereinafter authorized on March 22, 1961.

THEREFORE, IT IS ORDERED that Raymond Warrenner, t/a Blue Line Sightseeing Company, be, and he is hereby, granted Certificate of Public Convenience and Necessity Number 10 authorizing the transportation of passengers for hire as follows:

IRREGULAR ROUTES:

(a) Charter Operations:
Between points and places within the District of Columbia.

(b) Special Operations:
Sightseeing or pleasure tours:
From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia, and return.

BY DIRECTION OF THE COMMISSION:

/s/ Delmer Ison

DELMER ISON
Executive Director

BEFORE THE

APPENDIX B

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 384

IN THE MATTER OF:

Served September 11, 1964

Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity)

Application No. 58

Docket No. 39

APPEARANCES:

WARREN WOODS and DAVID C. VENABLE, attorneys for applicant;

MANUEL J. DAVIS, attorney for W.V.& M. Coach Company, Inc., protestant;

S. HARRISON KAHN, attorney for A.B.& W. Transit Company, protestant;

JOHN R. SIMS, JR. and C. ROBERT SARVER, attorneys for D. C. Transit System, Inc., protestant.

Raymond Warrenner, t/a Blue Line Sightseeing Company (applicant), seasonably filed an application for a "grandfather" certificate, pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact (Compact), authorizing the continuation of transportation of passengers allegedly engaged in on March 22, 1961, the effective date of the Compact. Specifically, the applicant seeks authority to transport sightseeing passengers for hire (1) in special operations between points and places in the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. The terms "special operations" and "charter operations" are defined by the Commission's Rules and Regulations as follows:

> "51-13. Charter Operation: The term 'charter operation' means the transportation of a group of passengers who, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together.

"51-14. Special Operation: The term 'special operation' means the transportation of passengers for a special trip, for which the carrier contracts with each individual separately."

The application was protested by the A.B.& W. Transit Company, W.V.& M. Coach Company and D.C. Transit System, Inc. Subsequently, several informal conferences were held in an attempt to resolve the issues raised by the application and protests thereto. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing, which hearing was presided over by an examiner. The parties did not request a proposed report of the examiner.

By Order No. 342, the Commission approved a portion of the application and granted a certificate of public convenience and necessity authorizing the following transportation:

IRREGULAR ROUTES:

(a) Charter Operations:
Between points and places within the District of Columbia.

(b) Special Operations:
Sightseeing or pleasure tours:
From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia, and return.

The protestants did not contest applicant's right to a certificate of public convenience authorizing special and charter operations in the transportation of sightseeing passengers between points in the District of Columbia. Such transportation was exempt from certificate requirements prior to the effective date of the Compact and it was established that the applicant was engaged in such transportation prior to the effective date of the Compact. Furthermore, protestants did not contest that applicant was in fact operating motor buses in special operations between points in the District of Columbia and certain points in Northern Virginia on the effective date of the Compact. The protestants argued, however, that applicant was not bona fide engaged in motor bus operations in interstate commerce between points in the District of Columbia and

points in Northern Virginia on the effective date of the Compact. It was on this latter issue that the protestants filed petitions for reconsideration of Commission Order No. 342. The applicant did not seek reconsideration.

By Order No. 351, the Commission granted reconsideration and ordered oral arguments before the full Commission, which arguments were held May 22, 1964. Thus, this matter is now before the Commission upon reconsideration of its Order No. 342.

The applicant maintains that it was legally engaged in sightseeing operations in interstate commerce between points in the District of Columbia and points in Northern Virginia by virtue of Section 203(b)(8) of the Interstate Commerce Act. This particular provision of the Interstate Commerce Act, popularly referred to as the Commercial Zone Exemption, provides that the operation is exempt from the certificate requirements of the Act if "the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction".

The Interstate Commerce Commission has held that the exemption "applies only if such carriers are lawfully engaged in corresponding intrastate passenger operations . . . ." A.B.& W. Transit Company v. D.C.Transit System, Inc., 83 MCC 547, 14 Fed. Car.Cases, par. 35,000. In that case the Interstate Commerce Commission held that a carrier holding only intrastate charter rights in Virginia could not claim exemption of interstate special operations between Virginia and the District of Columbia. Thus, to qualify for an exemption the applicant must have been lawfully engaged in corresponding intrastate operations in both the District of Columbia and Virginia.

It is not disputed that applicant was lawfully engaged in the territory of the District of Columbia in irregular route charter and sightseeing operations, without restriction. Thus, applicant's operations within the District of Columbia appear to satisfy half the requirements of Section 203(b)(8) of the Interstate Commerce Act. It becomes necessary then to determine whether its intrastate operations in Virginia are such as to make the two operations "corresponding" within the meaning of Section 203(b)(8) of the Interstate Commerce Act. A little background of applicant's operations will be helpful to a clear understanding of this issue.

Prior to 1958, applicant had transported passengers in sightseeing operations in limousines in the District of Columbia and suburban areas. In 1958, the applicant filed an application for a certificate of public convenience and necessity to authorize sightseeing operations in the Washington Metropolitan Area before the Interstate Commerce Commission. On July 17, 1958, the Interstate Commerce Commission denied the application and, in addition, held that applicant could not engage in sightseeing operations in interstate commerce in the Washington commercial zone under Section 203(b)(8) because it did not have the requisite intrastate authority from the Commonwealth of Virginia. Subsequently, applicant purchased an 11-passenger bus, and in 1959, a 44-passenger bus. These buses were licensed in the District of Columbia and entitled applicant to engage in irregular route sightseeing and charter operations within the District of Columbia. In February, 1959, the State Corporation Commission of Virginia issued to applicant two certificates of public convenience and necessity, authorizing restricted, regular route, round-trip only, sightseeing operations from two motels in Virginia. The Virginia law authorizing these certificates (Section 56-338.41) states:

> "A certificate issued under this Chapter shall authorize the holder named in the certificate to transport sightseers from the point of origin named in the certificate over regular routes to the points of interest named in the certificate and back to the point of origin . . . . Passengers shall be transported only on round-trips without stopover privileges . . . ."

Specifically, Certificates S-5 and S-6 were issued by the Virginia Commission to read as follows:

S-5:

> "From Charterhouse Motel at junction Va. No. 648 and Va. No. 350; northward over Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to south end of 14th Street Bridge; south on U. S. No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road, stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving the cemetery continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandria, Va.; south on Var. No. 350 to Charterhouse Motel."

S-6:

"From Rambler Motel, 1964 Richmond Highway, U. S. No. 1, Fairfax County, Va., north on U. S. No. 1 to Alexandria, north from Alexandria on Mount Vernon Memorial Highway to U. S. No. 1 at south end of 14th Street Bridge, south on U. S. Highway No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving cemetery to continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; then continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandria, Va.; then south on U. S. No. 1 to Rambler Motel."

It is apparent that the two intrastate operations are not "corresponding", with an irregular route, territorial right on the one hand, and a restricted, regular route, round-trip only right on the other hand. They are even less similar than the examples cited in A.B.&W.Transit Company v. D.C.Transit System, Inc., supra, and we are confident that the Interstate Commerce Commission would so rule. Thus, it must be concluded that the interstate operations alleged were not lawful prior to March 22, 1961.

In the case of Montgomery Charter Service, Inc., v Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964), the District of Columbia circuit court of appeals interpreted Section 4(a), Article XII, of the Compact (grandfather provision) by stating that a carrier was entitled to be "grandfathered" if it was "legally and in good faith engaged in" the transportation on the critical date. The Commission is, of course, bound by this interpretation, but, in addition, it concurs in this interpretation.

One of the primary purposes in creating this Commission cannot be overlooked. The Commission was created to place in a single agency the regulation of mass transit operations in the Washington area in lieu of separate regulation by several governmental agencies. The intent of the grandfather clause of the Compact was to establish an orderly, no-hearing procedure for preserving the existing operating rights of the carriers. However, the Commission was not created to give birth to new operations through legal technicalities stemming from the transition of regulatory authority

to this Commission. The situation is unlike the situation confronting the Interstate Commerce Commission when it was created. There was no regulation of interstate carriers prior to the creation of the Interstate Commerce Commission. Consequently, interstate carriers applying for grandfather rights before that Commission could not produce certificates of public convenience and necessity as evidence of operating authority.

While the grandfather provisions of the Compact and the Interstate Commerce Act are very similar, the difference in circumstances justifies different interpretations.

Since we have found that the applicant held no authority from the Interstate Commerce Commission, and its interstate operations did not come within the "commercial zone" exemption, it follows that his interstate bus operations were unauthorized on the effective date of the Compact. The mere fact that applicant was in fact engaged in bus operations in interstate commerce on the effective date of the Compact does not justify the Commission's granting a grandfather certificate. The important fact is that the operations must have been bona fide. The creation of a new regulatory agency to preserve the existing regulatory situation insofar as operating rights were concerned, should not be permitted to serve as a vehicle to authorize an operation otherwise unlawful. The applicant was no stranger to governmental motor carrier regulation, as noted elsewhere in this Order. The language of the Interstate Commerce Commission in denying his application, plus the language of the A.B.& W.Transit Company v. D.C.Transit System, Inc., decision, supra, should have served to put applicant on notice of the legal requirements of Section 203(b)(8). It cannot be said that applicant commenced interstate operations between the District of Columbia and points in Virginia in good faith; or that applicant was operating in good faith on the effective date of the Compact.

Upon reconsideration, the Commission finds that applicant, Raymond Warrenner, t/a Blue Line Sightseeing Company, was not bona fide engaged in motor bus operations in interstate commerce on the effective date of the Compact, but was bona fide engaged in sightseeing operations by motor bus in charter and special operations between points in the District of Columbia on the effective date of the Compact.

THEREFORE, IT IS ORDERED:

1. That Order No. 343 be, and it is hereby, set aside and held for naught.

2. That Raymond Warrenner, t/a Blue Line Sightseeing Company, be granted a certificate of public convenience and necessity authorizing the following operations:

IRREGULAR ROUTES:

(a) Charter Operations:

Between points within the District of Columbia.

(b) Special Operations: Sightseeing or Pleasure Tours

Between points within the District of Columbia.

3. That in all other respects the application be, and it is hereby, denied.

4. That this Order shall become effective thirty (30) days after the date of issuance hereof.

BY DIRECTION OF THE COMMISSION:

/s/ Delmer Ison

DELMER ISON
Executive Director

APPENDIX C

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 403

IN THE MATTER OF: Served October 27, 1964

Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity.) Application No. 58

Docket No. 39

On October 9, 1964, Raymond Warrenner, t/a Blue Line Sightseeing Company, filed an application for reconsideration of Order No. 384, wherein the Commission granted in part and denied in part his "grandfather" application. All issues presented in the application for reconsideration have been previously considered by the Commission.

The Commission is of the opinion that Order No. 384 is correct in every respect and that said application for reconsideration should be denied.

THEREFORE, IT IS ORDERED:

(1) That the application for reconsideration of Order No. 384, filed by Raymond Warrenner, t/a Blue Line Sightseeing Company, be, and it is hereby, denied.

(2) That this Order become effective Sunday, November 1, 1964.

BY DIRECTION OF THE COMMISSION:

/s/ Delmer Ison

DELMER ISON
Executive Director

IN THE
UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA
CIRCUIT

Raymond Warrenner, t/a Blue Line Sightseeing Company, Petitioner	)	
v.	)	Case No. 18991
Washington Metropolitan Area Transit Commission, Respondent	)	

PREHEARING STIPULATION

Petitioner, Raymond Warrenner, trading as Blue Line Sightseeing Company, Respondent, Washington Metropolitan Area Transit Commission, and Intervenors, W. V. & M. Coach Company, Inc., A. B. & W. Transit Company and D. C. Transit System, Inc., do hereby stipulate and agree as follows:

1. The questions presented by this appeal are as follows:

   1. Whether the Commission erred in finding that applicant's interstate operations were unlawful?

   2. Whether the Commission erred in finding that applicant's interstate operations were not bona fide because such operations were not lawfully engaged in?

2. The Joint Appendix in the above captioned action shall be filed within ten (10) days after the filing of Petitioner's Reply Briefs, or, if Petitioner does not file any Reply Brief, within twenty-five (25) days after the filing of Respondent's and Intervenors' Briefs.

3. Page references and citations in the Briefs of all parties shall be to the pages of the original record rather than to the pages of the Joint Appendix.

4. The Joint Appendix pages shall be consecutively numbered and in addition shall bear the appropriate original record page citations so that references in the Briefs to the original record pages can be readily ascertained in the Joint Appendix.

Respectfully submitted

/s/ Warren Woods
Warren Woods, Esq.
716 Perpetual Building
1111 E Street, N.W.
Washington, D.C.

Attorney for Petitioner
Raymond Warrenner, t/a Blue Line Sightseeing Company

/s/ Russell W. Cunningham
Russell W. Cunningham, Esq.

General Counsel for Respondent,
Washington Metropolitan Area Transit Commission

/s/ Manuel J. Davis
Manuel J. Davis, Esq.

Attorney for W. V. & M. Coach Company, Inc., Intervenor

/s/ S. Harrison Kahn
S. Harrison Kahn, Esq.

Attorney for A. B. & W. Transit Company, Intervenor
The Gray Line, Inc., Intervenor

/s/ John R. Sims, Jr.
John R. Sims, Jr., Esq.

Attorney for D. C. Transit System, Inc., Intervenor

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 18,991 SEPTEMBER TERM, 1964

RAYMOND WARRENNER, et al., v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

Before: Danaher, Circuit Judge,

in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: Dec. 10, 1964

JA 23

APPLICATION FOR CERTIFICATE OF

PUBLIC CONVENIENCE AND NECESSITY

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

I. Application of RAYMOND WARRENNER
(Name) (Trade Name)

BLUE LINE SIGHTSEEING

and individual
(State whether individual partnership or cooperation. If partnership, give names of all partners. If Corporation, give date and State of incorporation)

whose business address is 2400 New York Avenue, N.E.

Washington 2, D.C.
(City) (State)

II. Appropriate authority is applied for to continue the following operations which were being conducted as of March 22, 1961:

_____ REGULAR ROUTE COMMON CARRIER CITY-SUBURBAN OPERATION;

__X__ SIGHTSEEING OPERATIONS; __X__ CHARTER OPERATIONS;

_____ CONTRACT OPERATIONS or _____ OTHER OPERATIONS.

III. Applicant attached the following exhibits to this application:

Exhibit No. 1: A statement or statements of the authority sought covering each operation checked in Paragrah II. Such statements of authority should conform to your bona fide operation, authorized or being conducted as of March 22, 1961, and should reflect the proposed wording of the certificate or certificates to be issued by this Commission.

Exhibit No. 2: Authority issued by state or federal agency or other documents (include affidavits for any operation that was exempt from regulation) as evidence of bona fide operations as of March 22, 1961.

Exhibit No. 3: List of vehicles to be used in combined operations, showing make, model, year, seating capacity, and whether air conditioned.

Exhibit No. 4: Map showing routes and/or territory served as of March 22, 1961.

Exhibit No. 5: A current balance sheet and income statement.

Exhibit No. 6: Certification by proper state official that applicant is duly qualified to do business in each State in which applicant conducts operations.

Exhibit No. 7: Copy of all tariffs in effect on March 22, 1961.

Exhibit No. 8: List of all persons controlling, controlled by or under common control with applicant, or affiliated through stock ownership or interlocking directorates. Describe the nature of the business of any such persons, the State and date of incorporation and the States in which each of such persons is engaged in operations:

Not applicable

IV. Name and address of person to whom notices, orders and correspondence should be addressed: WILSON, WOODS & VILLALON, 716 Perpetual Building, 1111 E Street, N.W., Washington 4, D.C.

I, the above official of the above company, on oath, state that the above information, and all exhibits attached hereto, is true and correct to the best of my knowledge and belief.

/s/ Raymond Warrenner
(Signature)

Owner
(Official Title)

Subscribed and sworn before me this,
the 16th day of June, 1961.

/s/ Gladys H. LaBoon
(Notary Public)

My Commission expires: October 14, 1963

EXHIBIT NO. 1

STATEMENT OF AUTHORITY SOUGHT

Passengers in sightseeing service between points in the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions ofthe State of Virginia located within those counties and the counties of Montgomery and Prince Georges in the State of Maryland and political subdivisions of the State of Maryland located within said counties.

Passengers, in charter operations, between points and places in the District of Columbia.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

Number S-5

RAYMOND WARRENNER, D/B/A BLUE LINE SIGHTSEEING COMPANY

WASHINGTON, D.C.

is hereby authorized to furnish SIGHTSEEING service, by means of motor propelled vehicles between:

PLACES MENTIONED AND OVER ROUTES

DESCRIBED IN APPENDIX A ATTACHED TO

AND MADE A PART OF THIS CERTIFICATE

in accordance with Time Schedules and Tariffs of rates or fares and charges on file with the Commission, and subject to conditions and limitations noted below:

CONDITIONS:

All motor vehicles operated under and by virtue and authority of this Certificate must be operated in accordance with Chapter 12.3, Title 56, Code of Virginia, and applicable rules and regulations of the State Corporation Commission.

LIMITATIONS:

Dated at Richmond, Va. FEBRUARY 9, 19 59.

STATE CORPORATION COMMISSION

By: /s/ H. Lester Hooker
Commissioner

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
RICHMOND

APPENDIX A

Description of routes - Case No. 14140 - Certificate No. S-5

From Charterhouse Motel at junction Va. No. 648 and Va. No. 350; northward over Va. No. 350 to U.S., No. 1; north on U.S. No. 1 to south end of 14th Street Bridge; south on U.S. No. 1, to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road, stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving the cemetery continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U.S. No. 1; north on U.S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning over Mount Vernon Memorial Highway to Alexandria, Va.; south on Va. No. 350 to Charterhouse Motel.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

Number S-6

RAYMOND WARRENNER, D/B/A BLUE LINE SIGHTSEEING COMPANY

WASHINGTON, D.C.

is hereby authorized to furnish SIGHTSEEING service, by means of motor propelled vehicles between:

PLACES MENTIONED AND OVER ROUTES DESCRIBED IN APPENDIX A ATTACHED TO AND MADE A PART OF THIS CERTIFICATE

in accordance with Time Schedules and Tariffs of rates or fares and charges on file with the Commission, and subject to conditions and limitations noted below:

CONDITIONS:

All motor vehicles operated under and by virtue and authority of this Certificate must be operated in accordance with Chapter 12.3, Title 56, Code of Virginia, and applicable rules and regulations of the State Corporation Commission.

LIMITATIONS:

Dated at Richmond, Va. FEBRUARY 9, 19 59.

STATE CORPORATION COMMISSION

By: /s/ H. Lester Hooker
Commissioner

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
RICHMOND

APPENDIX A

Description of routes - Case No. 14141 - Certificate No. S-6.

From Rambler Motel, 1964 Richmond Highway, U.S. No. 1, Fairfax County, Va., north on U.S. No. 1 to Alexandria, north from Alexandira on Mount Vernon Memorial Highway to U.S. No 1 at south end of 14th Street Bridge, south on U.S. Highway No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving cemetery to continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U.S. No. 1; north on U.S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; then continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandira, Va.; then south on U.S. No. 1 to Rambler Motel.

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 253

Served April 29, 1963

IN THE MATTER OF:)	
)	
Application of Raymond Warrenner)	
t/a Blue Line Sightseeing, for a)	
Certificate of Public Convenience)	Application No. 58
and Necessity (Grandfather application))	Docket No. 39

Pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact, an application for a certificate of public convenience and necessity was filed by Raymond Warrenner, t/a Blue Line Sightseeing. The applicant seeks a "grandfather" certificate for such transportation as he was bona fide engaged in on March 22, 1961, the effective date of the Compact.

The Commission has held informal conferences in an attempt to determine the issues involved in this application. The Commission is now of the opinion that a public hearing is necessary to pursue the application.

THEREFORE, IT IS ORDERED:

That this matter be, and it is hereby, set for hearing on May 15, 1963, at 9:30 A. M., in the Arlington County Court House, Seventh Floor, Court House Road, Arlington, Virginia.

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 342

IN THE MATTER OF: Served March 9, 1964

Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity.) Application No. 58

Docket No. 39

APPEARANCES:

WARREN WOODS AND DAVID C. VENABLE, attorneys for applicant;

MANUEL J. DAVIS, attorney for W. V. & M. Coach Company, Inc., protestant;

S. HARRISON KAHN, attorney for A. B. & W. Transit Company, protestant;

JOHN R. SIMS, JR. AND C. ROBERT SARVER, attorneys for D. C. Transit System, Inc., protestant.

Presiding officer: Russell W. Cunningham.

Pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact (Compact), Raymond Warrenner, t/a Blue Line Sightseeing Company (Warrenner or applicant), seasonably filed an application for a "grandfather" certificate to authorize the transportation allegedly engaged in on March 22, 1961, the effective date of the Compact. The applicant seeks authority to transport passengers for hire (1) in sightseeing operations between points and places in the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. The A. B. & W. Transit Company, the W. V. & M. Coach Company, and the D. C. Transit System, Inc., protested the application. Subsequently, several informal conferences were held in an attempt to resolve issues raised by the application and protests. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing.

A transcript of the hearing consists of 113 pages, and 1 exhibit proffered by the applicant. The applicant and two other persons testified in behalf of the application. There was no evidence in opposition thereto except for a transcript of a hearing before the State Corporation Commission of the Commonwealth of Virginia, submitted by counsel for the A. B. & W. Transit Company, without objection.

Prior to 1958, Warrenner had transported passengers in sightseeing operations in limousines in the District of Columbia and suburban areas. In 1958, the applicant filed an application for a certificate of public convenience and necessity to authorize sightseeing operations in the Metropolitan Area before the Interstate Commerce Commission. On July 17, 1958, the Interstate Commerce Commission denied Warrenner's application and, in addition, held that he could not engage in sightseeing operations in interstate commerce in the Washington commercial zone because he did not have the requisite intrastate authority from the Commonwealth of Virginia. Subsequently, Warrenner purchased an 11-passenger bus, and in 1959, a 44-passenger bus. These buses were licensed in the District of Columbia and entitled Warrenner to engage in irregular route sightseeing and charter operations within the District of Columbia. In February, 1959, the State Corporation Commission of Virginia issued Warrenner two certificates of public convenience and necessity, authorizing him to furnish intrastate sightseeing operations between "places mentioned and over routes described" in an appendix attached thereto. The geographic area covered by those two certificates included portions of Arlington County, the City of Alexandria, and Fairfax County, Virginia.

Warrenner testified that in his opinion he was qualified to perform sightseeing operations in interstate commerce within the Washington commercial zone. He further testified, and offered an exhibit to substantiate his testimony, that he was conducting on March 22, 1961, sightseeing operations within the District of Columbia, from the District of Columbia to Virginia, from Maryland to the District of Columbia and Virginia, and from Virginia to the District of Columbia. He further testified that his two vehicles were properly licensed in the District of Columbia and Virginia, but that he had never had Maryland license nor any operating authority from the Interstate Commerce Commission. He also testified that he had, on the effective date and prior thereto, conducted charter operations within the District of Columbia.

The protestants do not contest the application insofar as it relates to charter operations within the District of Columbia, nor do they contest that Warrenner is entitled to sightseeing authority in the District of Columbia. They do contend that Warrenner was not bona fide engaged in interstate sightseeing operations. The protestants argue that while the applicant had an unlimited irregular route sightseeing authorization in the District of Columbia, his authority from the State of Virginia was extremely

limited, confining him to originating passengers only at two motels specified in the Virginia certificates, transporting them only along the routes described therein and returning to the two named motels. They argue further that this prohibits Warrenner from originating passengers any place other than the two named motels. They further contend that this is not the corresponding intrastate authority contemplated under Section 203(b)(8) of the Interstate Commerce Act which exempts carriers from the certificate requirements of said Act if they have the corresponding authority to operate over the entire length of that route or territory in each State.

On the other hand, Warrenner argues that he does qualify for the exemption in that the Virginia routes touch the District of Columbia at several points and that this permits him to "tack" the two authorities together and qualify under the exemption.

The Commission is of the opinion that it need not determine whether the two intrastate operations were "corresponding" and/or whether they could be tacked together to qualify under the Interstate Commerce Act's commercial zone exemption. Even if Warrenner's position is wrong legally, and we are not prepared to say that it is, we are of the opinion that Warrenner began the operation in good faith under "color" of authority; that his movements were open and undisguised and the transportation was rendered in his own vehicles, clearly painted, marked, and identified as belonging to him, and therefore that he was bona fide engaged in the transportation hereinafter authorized on March 22, 1961.

THEREFORE, IT IS ORDERED that Raymond Warrenner, t/a Blue Line Sightseeing Company, be, and he is hereby, granted Certificate of Public Convenience and Necessity Number 10 authorizing the transportation of passengers for hire as follows:

IRREGULAR ROUTES:

(a) Charter Operations:
Between points and places within the District of Columbia.

(b) Special Operations:
Sightseeing or pleasure tours:
From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia, and return.

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 351

IN THE MATTER OF: Served April 13, 1964

Application of Raymond Warrenner)
d/b/a Blue Line Sightseeing Company) Application No. 58
for a Certificate of Public Con-)
venience and Necessity (grandfather).) Docket No. 39

Applications for reconsideration of Order No. 342 issued March 9, 1964, have been filed by D. C. Transit System, Inc., W. V. & M. Coach Company, Inc., A. B. & W. Transit Company, Diamond Tours, and The Gray Line, Inc. The Commission is of the opinion that said applications should be granted, and oral argument is warranted.

THEREFORE, IT IS ORDERED:

1. That the applications for reconsideration of Order No. 342 be, and they are hereby, granted;

2. That the Commission shall hear oral argument of the issues on Friday, May 22, 1964, at 10:30 a.m., in Room 520, District Building, Washington, D. C.

BY DIRECTION OF THE COMMISSION:

PELMER ISON
Executive Director

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BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 384

IN THE MATTER OF: Served September 11, 1964

Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity. — Application No. 58; Docket No. 39

APPEARANCES:

WARREN WOODS and DAVID C. VENABLE, attorneys for applicant;

MANUEL J. DAVIS, attorney for W.V.& M. Coach Company, Inc., protestant;

S. HARRISON KAHN, attorney for A.B.& W. Transit Company, protestant;

JOHN R. SIMS, JR. and C. ROBERT SARVER, attorneys for D. C. Transit System, Inc., protestant.

Raymond Warrenner, t/a Blue Line Sightseeing Company (applicant), seasonably filed an application for a "grandfather" certificate, pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact (Compact), authorizing the continuation of transportation of passengers allegedly engaged in on March 22, 1961, the effective date of the Compact. Specifically, the applicant seeks authority to transport sightseeing passengers for hire (1) in special operations between points and places in the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. The terms "special operations" and "charter operations" are defined by the Commission's Rules and Regulations as follows:

> "51-13. Charter Operation: The term 'charter operation' means the transportation of a group of passengers who, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together.

"51-14. Special Operation: The term 'special operation' means the transportation of passengers for a special trip, for which the carrier contracts with each individual separately."

The application was protested by the A.B.& W. Transit Company, W.V.& M.Coach Company and D.C. Transit System, Inc. Subsequently, several informal conferences were held in an attempt to resolve the issues raised by the application and protests thereto. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing, which hearing was presided over by an examiner. The parties did not request a proposed report of the examiner.

By Order No. 342, the Commission approved a portion of the application and granted a certificate of public convenience and necessity authorizing the following transportation:

IRREGULAR ROUTES:

(a) Charter Operations:
Between points and places within the District of Columbia.

(b) Special Operations:
Sightseeing or pleasure tours:
From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia, and return.

The protestants did not contest applicant's right to a certificate of public convenience authorizing special and charter operations in the transportation of sightseeing passengers between points in the District of Columbia. Such transportation was exempt from certificate requirements prior to the effective date of the Compact and it was established that the applicant was engaged in such transportation prior to the effective date of the Compact. Furthermore, protestants did not contest that applicant was in fact operating motor buses in special operations between points in the District of Columbia and certain points in Northern Virginia on the effective date of the Compact. The protestants argued, however, that applicant was not bona fide engaged in motor bus operations in interstate commerce between points in the District of Columbia and

points in Northern Virginia on the effective date of the Compact. It was on this latter issue that the protestants filed petitions for reconsideration of Commission Order No. 342. The applicant did not seek reconsideration.

By Order No. 351, the Commission granted reconsideration and ordered oral arguments before the full Commission, which arguments were held May 22, 1964. Thus, this matter is now before the Commission upon reconsideration of its Order No. 342.

The applicant maintains that it was legally engaged in sightseeing operations in interstate commerce between points in the District of Columbia and points in Northern Virginia by virtue of Section 203(b)(8) of the Interstate Commerce Act. This particular provision of the Interstate Commerce Act, popularly referred to as the Commercial Zone Exemption, provides that the operation is exempt from the certificate requirements of the Act if "the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction".

The Interstate Commerce Commission has held that the exemption "applies only if such carriers are lawfully engaged in corresponding intrastate passenger operations . . . ." A.B.& W. Transit Company v. D.C.Transit System, Inc., 83 MCC 547, 14 Fed. Car.Cases, par. 35,000. In that case the Interstate Commerce Commission held that a carrier holding only intrastate charter rights in Virginia could not claim exemption of interstate special operations between Virginia and the District of Columbia. Thus, to qualify for an exemption the applicant must have been lawfully engaged in corresponding intrastate operations in both the District of Columbia and Virginia.

It is not disputed that applicant was lawfully engaged in the territory of the District of Columbia in irregular route charter and sightseeing operations, without restriction. Thus, applicant's operations within the District of Columbia appear to satisfy half the requirements of Section 203(b)(8) of the Interstate Commerce Act. It becomes necessary then to determine whether its intrastate operations in Virginia are such as to make the two operations "corresponding" within the meaning of Section 203(b)(8) of the Interstate Commerce Act. A little background of applicant's operations will be helpful to a clear understanding of this issue.

Prior to 1958, applicant had transported passengers in sightseeing operations in limousines in the District of Columbia and suburban areas. In 1958, the applicant filed an application for a certificate of public convenience and necessity to authorize sightseeing operations in the Washington Metropolitan Area before the Interstate Commerce Commission. On July 17, 1958, the Interstate Commerce Commission denied the application and, in addition, held that applicant could not engage in sightseeing operations in interstate commerce in the Washington commercial zone under Section 203(b)(8) because it did not have the requisite intrastate authority from the Commonwealth of Virginia. Subsequently, applicant purchased an 11-passenger bus, and in 1959, a 44-passenger bus. These buses were licensed in the District of Columbia and entitled applicant to engage in irregular route sightseeing and charter operations within the District of Columbia. In February, 1959, the State Corporation Commission of Virginia issued to applicant two certificates of public convenience and necessity, authorizing restricted, regular route, round-trip only, sightseeing operations from two motels in Virginia. The Virginia law authorizing these certificates (Section 56-338.41) states:

> "A certificate issued under this Chapter shall authorize the holder named in the certificate to transport sightseers from the point of origin named in the certificate over regular routes to the points of interest named in the certificate and back to the point of origin . . . . Passengers shall be transported only on round-trips without stopover privileges . . . ."

Specifically, Certificates S-5 and S-6 were issued by the Virginia Commission to read as follows:

S-5:

> "From Charterhouse Motel at junction Va. No. 648 and Va. No. 350; northward over Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to south end of 14th Street Bridge; south on U. S. No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road, stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving the cemetery continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandria, Va.; south on Va. No. 350 to Charterhouse Motel."

S-6:

"From Rambler Motel, 1964 Richmond Highway, U. S. No. 1, Fairfax County, Va., north on U. S. No. 1 to Alexandria, north from Alexandria on Mount Vernon Memorial Highway to U. S. No. 1 at south end of 14th Street Bridge, south on U. S. Highway No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving cemetery to continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; then continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandria, Va.; then south on U. S. No. 1 to Rambler Motel."

It is apparent that the two intrastate operations are not "corresponding", with an irregular route, territorial right on the one hand, and a restricted, regular route, round-trip only right on the other hand. They are even less similar than the examples cited in A.B.& W.Transit Company v. D.C.Transit System, Inc., supra, and we are confident that the Interstate Commerce Commission would so rule. Thus, it must be concluded that the interstate operations alleged were not lawful prior to March 22, 1961.

In the case of Montgomery Charter Service, Inc., v Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964), the District of Columbia circuit court of appeals interpreted Section 4(a), Article XII, of the Compact (grandfather provision) by stating that a carrier was entitled to be "grandfathered" if it was "legally and in good faith engaged in" the transportation on the critical date. The Commission is, of course, bound by this interpretation, but, in addition, it concurs in this interpretation.

One of the primary purposes in creating this Commission cannot be overlooked. The Commission was created to place in a single agency the regulation of mass transit operations in the Washington area in lieu of separate regulation by several governmental agencies. The intent of the grandfather clause of the Compact was to establish an orderly, no-hearing procedure for preserving the existing operating rights of the carriers. However, the Commission was not created to give birth to new operations through legal technicalities stemming from the transition of regulatory authority

to this Commission. The situation is unlike the situation confronting the Interstate Commerce Commission when it was created. There was no regulation of interstate carriers prior to the creation of the Interstate Commerce Commission. Consequently, interstate carriers applying for grandfather rights before that Commission could not produce certificates of public convenience and necessity as evidence of operating authority.

While the grandfather provisions of the Compact and the Interstate Commerce Act are very similar, the difference in circumstances justifies different interpretations.

Since we have found that the applicant held no authority from the Interstate Commerce Commission, and its interstate operations did not come within the "commercial zone" exemption, it follows that his interstate bus operations were unauthorized on the effective date of the Compact. The mere fact that applicant was in fact engaged in bus operations in interstate commerce on the effective date of the Compact does not justify the Commission's granting a grandfather certificate. The important fact is that the operations must have been bona fide. The creation of a new regulatory agency to preserve the existing regulatory situation insofar as operating rights were concerned, should not be permitted to serve as a vehicle to authorize an operation otherwise unlawful. The applicant was no stranger to governmental motor carrier regulation, as noted elsewhere in this Order. The language of the Interstate Commerce Commission in denying his application, plus the language of the A.B.& W.Transit Company v. D.C.Transit System, Inc., decision, supra, should have served to put applicant on notice of the legal requirements of Section 203(b)(8). It cannot be said that applicant commenced interstate operations between the District of Columbia and points in Virginia in good faith; or that applicant was operating in good faith on the effective date of the Compact.

Upon reconsideration, the Commission finds that applicant, Raymond Warrenner, t/a Blue Line Sightseeing Company, was not bona fide engaged in motor bus operations in interstate commerce on the effective date of the Compact, but was bona fide engaged in sightseeing operations by motor bus in charter and special operations between points in the District of Columbia on the effective date of the Compact.

THEREFORE, IT IS ORDERED:

1. That Order No. 343 be, and it is hereby, set aside and held for naught.

2. That Raymond Warrenner, t/a Blue Line Sightseeing Company, be granted a certificate of public convenience and necessity authorizing the following operations:

IRREGULAR ROUTES:

(a) Charter Operations:

Between points within the District of Columbia.

(b) Special Operations: Sightseeing or Pleasure Tours

Between points within the District of Columbia.

3. That in all other respects the application be, and it is hereby, denied.

4. That this Order shall become effective thirty (30) days after the date of issuance hereof.

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 388

IN THE MATTER OF:	Served September 16, 1964
Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity.	Application No. 58 Docket No. 39

To correct a printing inadvertence:

IT IS ORDERED that Order No. 384, served September 11, 1964, be, and it is hereby, amended in the following manner:

Page 6, next to last line, delete "343", insert "342".

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 403

IN THE MATTER OF:

Served October 27, 1964

Application of Raymond Warrenner, t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity.

Application No. 58

Docket No. 39

On October 9, 1964, Raymond Warrenner, t/a Blue Line Sightseeing Company, filed an application for reconsideration of Order No. 384, wherein the Commission granted in part and denied in part his "grandfather" application. All issues presented in the application for reconsideration have been previously considered by the Commission.

The Commission is of the opinion that Order No. 384 is correct in every respect and that said application for reconsideration should be denied.

THEREFORE, IT IS ORDERED:

(1) That the application for reconsideration of Order No. 384, filed by Raymond Warrenner, t/a Blue Line Sightseeing Company, be, and it is hereby, denied.

(2) That this Order become effective Sunday, November 1, 1964.

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

BRIEF FOR ~~APPELLANT~~ Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18, 991

RAYMOND WARRENNER, T/A
BLUE LINE SIGHTSEEING COMPANY,

Appellant,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Appellee,

D. C. TRANSIT SYSTEM, INC.,

WASHINGTON, VIRGINIA & MARYLAND
COACH COMPANY, INC.,

ALEXANDRIA, BARCROFT AND WASHINGTON
TRANSIT COMPANY,

THE GRAY LINE, INC.,

Intervenors.

ON APPEAL FROM THE WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

Of Counsel:

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716 Perpetual Building
1111 E Street, N. W.
Washington 4, D. C.

WARREN WOODS
DAVID C. VENABLE
716 Perpetual Building
1111 E Street, N. W.
Washington 4, D. C.

Attorneys for ~~Appellant~~ Petitioner

STATEMENT OF QUESTIONS PRESENTED

The parties to this proceeding by prehearing stipulation filed herein and approved by Order of this Court dated December 10, 1964, have stipulated the issues of this proceeding as follows:

1. Whether the Commission erred in finding that applicant's interstate operations were unlawful?

2. Whether the Commission erred in finding that applicant's interstate operations were not bona fide because such operations were not lawfully engaged in?

TABLE OF CONTENTS

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TABLE OF CITATIONS

*Cases or authorities chiefly relied on are indicated by asterisks.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,991

RAYMOND WARRENNER, T/A
BLUE LINE SIGHTSEEING COMPANY,

Appellant

v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Appellee,

D. C. TRANSIT SYSTEM, INC.,

WASHINGTON, VIRGINIA & MARYLAND
COACH COMPANY, INC.,

ALEXANDRIA, BARCROFT AND WASHINGTON
TRANSIT COMPANY,

THE GRAY LINE, INC.,

Intervenors.

ON APPEAL FROM THE WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from two Orders of the Washington Metropolitan Area Transit Commission served September 11, 1964 and October 27, 1964, arising out of a proceeding entitled In the Matter of Application of Raymond Warrenner,

t/a Blue Line Sightseeing Company, for a Certificate of Public Convenience and Necessity, Application No. 58, Docket No. 39. The two Orders are respectively designated No. 384 and 403 and were filed with this Court as Appendices B and C to the Petition to Review filed by Appellant on November 10, 1964. Order No. 384 denied the application of Warrenner for authority to engage in motor bus operations in interstate commerce, between the District of Columbia and points in Northern Virginia. (Comm. Index Item No. 22)[1/] Order No. 403 denied a petition for reconsideration of Order No. 384. (Comm. Index Item No. 24)

The jurisdiction of this Court is invoked under Title II, Article XII, Section 17(a) of the Washington Metropolitan Area Transit Regulation Compact, approved by Congress, Public Law 86-794, 74 Stat. 1031, as amended.

A petition to review and set aside the orders of the Transit Commission was filed with this Court on November 10, 1964. Subsequently, by Order of this Court entered December 15, 1964, the effective date of the Transit Commission's Order No. 403 was stayed pending review herein. The petition to review was filed within sixty days after the Orders of the Transit Commission complained of, in accordance with Section 17(a) of the Compact, supra.

1/ Commission Index References are used in this brief instead of Record references because as of the time of completion of the brief neither the Record nor an Index of the Record had been filed in Court. Moreover when counsel called at the Commission's offices on December 30, 1964 to inspect the Record he found that it had not been paginated and was bound together out of chronological sequence. When the Joint Appendix and Record are filed in Court an effort will be made to insert proper Record references in the brief. Due to an expedited briefing schedule, this brief had to be filed on January 5, 1965.

STATEMENT OF THE CASE

Pursuant to the "grandfather" provisions of Title II, Article XII, Section 4(a) of the Compact, Appellant, Raymond Warrenner, trading as Blue Line Sightseeing Company, seasonably filed an application with the Washington Metropolitan Area Transit Commission on June 20, 1961, seeking a certificate of public convenience and necessity to authorize continuation of certain sightseeing and charter operations in which he was engaged on and prior to March 22, 1961, the effective date of the Compact. The applicant sought authority to transport passengers for hire (1) in sightseeing operations between points and places within the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. (Comm. Index Item 1)

More than a year after the filing of the application, the Executive Director of the Commission by letter of October 25, 1962, notified applicant that his application had been timely filed, that the Commission had begun to process the application, that a broad summary of the authority sought had been published in a District of Columbia newspaper on October 19, 1962, and that protests to the granting of the application could be filed with the Commission within thirty days after publication of notice. The A.B.& W. Transit Company, the W.V.& M. Coach Company and the D.C. Transit System, Inc. protested the application. (Comm. Index Items 3 and 4) Subsequently after several informal conferences had failed to resolve issues raised by the application and protests, the Commission ordered the matter to formal hearing.

Hearing on the application was held in Washington, D. C., on May 15, 1963 before Russell W. Cunningham as Presiding Officer. The applicant and two others testified in behalf of the application. There was no evidence

in opposition thereto except the submission of a transcript of a hearing before the State Corporation Commission of the Commonwealth of Virginia by counsel for the A.B.& W. Transit Company, without objection. (Comm.Index Item No. 8)

At this hearing Warrenner testified that in 1957 he had applied to the Interstate Commerce Commission for authority to transport passengers in special sightseeing operations between Washington, D. C., Alexandria, Virginia, points in Arlington and Fairfax Counties, Virginia, and those in Prince Georges County, Md., over irregular routes. The Interstate Commerce Commission denied this application and in doing so said:

> "Applicant holds no intrastate authority in Maryland and failed to specifically identify of record the intrastate authority, if any, held by him in Virginia for the transportation of passengers in special or other operations. On this report it cannot be found that applicant's operations, if any, to and from points in those two states in connection with his sightseeing service would come within the exemption of Section 203(b)(8) of the Act. Applicant is admonished, therefore, to discontinue all operations to or from Virginia or Maryland except those, if any, which definitely come within one or the other of the exemptions provided in Section 203(b)(2) and 203(b)(8), unless and until appropriate authority is obtained therefor." Raymond Warrenner Common Carrier Application, 77 M.C.C. 213, 216 (July 17, 1958)

Heeding the admonition of the Interstate Commerce Commission in the paragraph just quoted and for the specific purpose of trying to take advantage of the commercial zone exemption of Section 203(b)(8) of the Interstate Commerce Act, Warrenner promptly filed an application with the Corporation Commission of the State of Virginia for appropriate intrastate operating authority. Thereafter in February, 1959 the State Corporation Commission issued two certificates to Warrenner authorizing him to furnish

sightseeing service between two motels in Virginia and "places mentioned and over routes described in Appendix A attached to and made a part of this certificate." (Comm. Index Item 1) Among the "places mentioned" in Appendix A to the certificates was the south end of the 14th Street Bridge between Virginia and the District of Columbia.

According to Warrenner's uncontradicted testimony after issuance of the two certificates by the State of Virginia he consulted with his Virginia attorney and asked whether he should file additional applications in order to serve intermediate points other than those specifically named as origin points in his Virginia certificates which were designated S-5 and S-6. Specifically, Warrenner said:

> "We applied, or we were getting ready to apply at that time. We thought we had to have different stops specified. Our lawyer, who is also WV&M's lawyer, in Richmond went to the Commission and they handed down an administrative ruling, that it was not necessary to specify each place along the route.
>
> "I asked for it in writing, and my lawyer told me the Commission informed him - that is, John Crutchfield Godden, my lawyer - that the Commission had informed him that it wasn't necessary to have that in writing; that was their ruling and that was going to stand." (Hearing Tr. 48)

All of the points named in certificates S-5 and S-6 are within the Washington, D. C. Commercial Zone as defined by the Interstate Commerce Commission in 54 M.C.C. 797 (1952). Section 203(b)(8), commonly referred to as the commercial zone exemption provision of the Interstate Commerce Act, provides that a carrier need not obtain authority from the Interstate Commerce Commission if he is engaged in

> "(8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to or commercially a part of any such municipality or municipalities,..... provided that the motor carrier engaged in such

> transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; ....."

Warrenner testified that in accordance with the information given him by his counsel and after issuance of the two Virginia intrastate certificates he assumed his interstate operations were lawful and were covered by the commercial zone exemption. (Hearing Tr. 51-52) No complaints were filed with either the Virginia State Corporation Commission or the Interstate Commerce Commission alleging unlawful operation, although he had been operating openly in the same manner as he is presently operating ever since issuance of the Virginia certificates in February, 1959.

On March 9, 1964 the Commission served its Order No. 342, finding that Warrenner was bona fide engaged in transportation on the grandfather date as follows:

> "IRREGULAR ROUTES
>
> (a) Charter operations:
> Between points and places within the District of Columbia
>
> (b) Special Operations:
> Sightseeing or pleasure tours:
> From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia and return."

In reaching this conclusion the Commission said:

> "The Commission is of the opinion that it need not determine whether the two intrastate operations were 'corresponding' and/or whether they could be tacked together to qualify under the Interstate Commerce Act's commercial zone exemption. Even if Warrenner's position

> is wrong legally, and we are not prepared to say that it is, we are of the opinion that Warrenner began the operation in good faith under 'color' of authority; that his movements were open and undisguised and the transportation was rendered in his own vehicles, clearly painted, marked, and identified as belonging to him, and therefore that he was bona fide engaged in the transportation hereinafter authorized on March 22, 1961." (Comm. Index Item No. 20)

While Order No. 342 granted to Appellant less authority than he had asked for in his application, he was content to accept it. However, the three protestants filed petitions for reconsideration and oral argument on March 25 and April 9, 1964. (Comm. Index Items 15, 16) By Order No. 351 the Commission granted reconsideration and ordered oral arguments before the full Commission which arguments were held May 22, 1964. (Comm. Index Items 21, 25b)

On September 11, 1964 the Commission served its Order No. 384. (Comm. Index Item 22) Its decision noted that protestants did not contest that applicant was in fact operating motor buses in special operations between points in the District of Columbia and certain points in Northern Virginia on the effective date of the Compact, but argued, however, that applicant was not bona fide engaged in motor bus operations in interstate commerce between points in the District of Columbia and points in Northern Virginia on the effective date of the Compact. In a complete reversal of its earlier decision, the Commission held that the commercial zone exemption from regulation by the Interstate Commerce Commission provided by Section 203(b)(8) of the Interstate Commerce Act applies only in situations where the intrastate operations of the applicant in the two jurisdictions here involved (Virginia and the District of Columbia) are "corresponding intrastate operations." It concluded that since applicant's District rights were for irregular route, sightseeing and charter operations within the District of

Columbia and his Virginia rights were for restricted, regular route, round-trip only operations, they were not "corresponding" rights within the meaning of the decision of the Interstate Commerce Commission in A.B.& W. Transit Company v. D.C. Transit System, Inc., 83 M.C.C. 547, 14 Fed. Car. Cases, par. 35,000, and hence it must be concluded that the interstate operations alleged were not lawful prior to March 22, 1961, the grandfather date.

Having found the grandfather date operations between the District of Columbia and Virginia were not exempt and therefore not lawful under the Interstate Commerce Act, the Commission then reached the further conclusion that an operation which was not lawful could not in the legal sense be "bona fide," citing Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964). It thereupon set aside and held for naught its earlier Order No. 343 and granted a certificate to Warrenner authorizing only operations within the District of Columbia.

On October 9, 1964 Warrenner moved for reconsideration of Order No. 384. (Comm. Index Item 17) By Order No. 403, served October 27, 1964 to be effective November 1, 1964, the petition for reconsideration was denied (Comm. Index Item 24) Appellant then filed a Motion to Stay the effective date of Order No. 403 pending review of the Commission's earlier orders by this Court. This Motion to Stay was denied by Transit Commission Order No. 410, issued November 27, 1964. Subsequently, after Appellant had filed a Motion to Stay with this Court, the Transit Commission granted a stay effective until December 15, 1964. On that same date this Court, after hearing argument on the Appellant's Motion to Stay, granted a stay of the effective date of the Transit Commission's Orders pending review herein.

STATUTES INVOLVED

The relevant provision of the Washington Metropolitan Area Transit Regulation Compact, approved by Congress, Public Law 86-794, 74 Stat. 1031, as amended, is Title II, Article XII, Section 4(a) which reads as follows:

> "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful."

STATEMENT OF POINTS

1. The Commission erred in concluding that applicant's interstate sightseeing operations within the Washington, D. C. Commercial Zone were unlawful.

2. The Commission erred in finding that applicant's interstate sightseeing operations were not bona fide because such operations were not lawfully engaged in.

SUMMARY OF ARGUMENT

The Washington Metropolitan Area Transit Commission is without jurisdiction under the Compact to determine whether operations conducted under authority granted by the State Corporation Commission of Virginia and pursuant to the commercial zone exemption of Section 203(b)(8) of the Interstate Commerce Act, are lawful operations. The Interstate Commerce Commission has

exclusive jurisdiction subject to judicial review to decide whether operations conducted under claim of exemption in accordance with Section 203(b)(8) are lawful operations. Absent proof that the Interstate Commerce Commission has found Warrenner's operations to be unlawful under the commercial zone exemption, this Commission is without authority to substitute its judgment for the judgment of the Interstate Commerce Commission. See Slagle, Contract Carrier Application, 2 M.C.C. 127 (1937).

Assuming arguendo that the Transit Commission does have the right to construe and interpret Section 203(b)(8) of the Interstate Commerce Act, then its interpretation is incorrect. Section 203(b)(8) imposes only three requirements for exemption: (1) that the transportation be within an established commercial zone; (2) that the carrier be engaged in such transportation over regular or irregular routes over the entire length of such interstate route or routes, and (c) that the carrier's operations are in accordance with the laws of each state having jurisdiction, in this case Virginia and the District of Columbia. The Transit Commission has erroneously interpolated into Section 203(b)(8) a fourth requirement not found in the statute that the authority relied on from each jurisdiction within the commercial zone be exactly corresponding or identical in nature. It imports this fourth requirement into the statute because of an erroneous interpretation by it of A.B.& W. Transit Company v. D. C. Transit System, Inc., 83 M.C.C. 547 (1960). This decision compared charter authority in one jurisdiction with mass transportation authority in another jurisdiction and held the exemption did not apply on those limited facts. Here Warrenner had sightseeing authority in one jurisdiction and sightseeing authority in the other jurisdiction also, and since he operated over the entire length of the interstate routes involved over

regular or irregular routes in accordance with the laws of the District of Columbia and the State of Virginia, he properly qualified for the commercial zone exemption.

But the fundamental error committed by the Transit Commission is its insistence on equating the term "bona fide" as used in Section 4(a) of the Compact with "lawful." It reaches this conclusion on the basis of an erroneous interpretation of this Court's decision in Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964) and on the erroneous assumption that "While the grandfather provisions of the Compact and the Interstate Commerce Act are very similar, the difference in circumstances justifies different interpretations." The Montgomery Charter case stands only for the proposition that lawful operations must be bona fide; it does not stand for the obverse proposition that bona fide operations, to qualify under the Compact, must be lawful. Further, there is no logical or legal justification for applying different legal tests as to the meaning of "bona fide" as used respectively in the grandfather provisions of the Interstate Commerce Act and in the Compact. In its first decision in this case (Comm. Index Item 20, Order No. 342) the Transit Commission correctly applied the conventional Interstate Commerce definition of bona fide and held that operations begun in good faith under "color" of authority which were openly conducted without evasion or subterfuge, were bona fide operations. Indeed, protestants in this case in their briefs on reconsideration affirmatively assert that it was the intent of the legislators that the Transit Commission's Act and the section in question be modeled after the Interstate Commerce Act, and that the words being fairly identical "for all intents and purposes it can be said that the meaning is the same." (Comm.

Index, Item 16, p. 21). Since the Interstate Commerce Commission with support from the United States Supreme Court has consistently refused to equate the term "bona fide operations" with lawful operations in passing on grandfather applications, it was clearly error for the Transit Commission to take an opposite view of the law.

ARGUMENT

I. The Commission erred in concluding that applicant's interstate sightseeing operations within the Washington, D.C. Commercial Zone were unlawful at the grandfather date.

A. Absent a specific finding by the Interstate Commerce Commission that Warrenner's operations were unlawful, the Transit Commission is without authority to reach such a conclusion on the basis of its own construction of Section 203(b)(8) of the Interstate Commerce Act.

In reaching its conclusion that Warrenner's interstate operations were not lawfully conducted prior to March 22, 1961 (the grandfather date), the Transit Commission did not rely upon any finding of the Interstate Commerce Commission of unlawful operation by Warrenner, but undertook on its own initiative to construe and apply Section 203(b)(8) of the Interstate Commerce Act. Thus, in its decision it says:

> "It is apparent that the two intrastate operations are not 'corresponding', with an irregular route, territorial right on the one hand, and a restricted, regular route, round-trip only right on the other hand. They are even less similar than the examples cited in A.B.& W. Transit Company v. D.C. Transit System, Inc., supra, and we are confident that the Interstate Commerce Commission would so rule. Thus, it must be concluded that the interstate operations alleged were not lawful prior to March 22, 1961." (Comm. Index, Item 22, p. 5)

We submit the Transit Commission is without legal authority to construe Section 203(b)(8) of the Interstate Commerce Act. If it is contended that operations are unlawful under the Interstate Commerce Act, procedures are

available under Section 204(c) of that Act to obtain a ruling from the Interstate Commerce Commission as to the legality of the operations. This Section states that "Upon complaint in writing by any person, State board, organization or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier. . . . has failed to comply with any provision of this part, or with any requirement pursuant thereto." If the Commission finds after notice and hearing that a motor carrier is not in compliance with the law, it may issue a cease and desist order. Hence any one of the protestants in this case and the Transit Commission itself could have obtained a ruling from the Interstate Commerce Commission both before and after the critical grandfather date as to the lawfulness of Warrenner's operations under the commercial zone exemption. If the Interstate Commerce Commission had considered Warrenner's operations unlawful it could have, on its own initiative, instituted an investigation and, upon notice and hearing, reached a finding of unlawfulness and issued a cease and desist order.

But it is quite clear that the Transit Commission has no authority to substitute its judgment of what is lawful or unlawful under the Interstate Commerce Act for that of the Interstate Commerce Commission. The Interstate Commerce Commission has exclusive jurisdiction subject to judicial review to decide whether operations conducted under claim of exemption in accordance with Section 203(b)(8) are lawful operations.

Yet in this case, the Transit Commission, ignoring the fact that neither the Virginia State Corporation Commission nor the Interstate Commerce Commission has ever ruled that Warrenner's operations between the District of Columbia and Virginia points have been unlawful, presumes to find that the operations were unlawful, and therefore, not bona fide. Long ago during the

early days of the Motor Carrier Act, the Interstate Commerce Commission had this to say in a similar situation involving a grandfather case:

> "It seems clear that protestants' interpretation of the act would in substance and practical effect require the exercise on our part of judicial functions in respect of State laws. That is to say, in the absence of either admission by an applicant of law violation or proper proof of conviction of violation in a court of competent jurisdiction, the responsibility of the matter would be upon us. The act makes it a prerequisite to a grant of a certificate or a permit under the 'grandfather' clauses, not only that applicant was 'in bona fide operation' on the date specified, but also that it 'has so operated since that time.' It follows that, in the absence of admissions or convictions, it would be necessary for us to examine into the conduct of an applicant with reference to applicable State laws over a period of time which might be long. To determine the fact of compliance or noncompliance, it would be our responsibility, first, to ascertain what the State law is; second, to construe that law; and third, to apply it as construed to the facts of the case..... Protestants refer to no provision of the Act which would imply that we have such broad responsibility and authority in the interpretation and application of State statutes, and we find no such provision." Slagle Contract Carrier Application, 2 M.C.C. 127, 140 (1937)

In the present case without admission of violation by the applicant or any action by either the Virginia Corporation Commission or the Interstate Commerce Commission adverse to the contention of Warrenner that he had a right to operate under the commercial zone exemption, the Transit Commission says it is "confident that the Interstate Commerce Commission would so rule," and proceeds to make that Commission's ruling for it.

The logic of this 1937 Interstate Commerce Commission decision, issued under the aegis of the distinguished Commissioner Eastman, is unassailable. Only administrative chaos can result from having a new regional administrative body presume to second guess a national regulatory agency.

B. Assuming arguendo that the Transit Commission has the authority to construe Section 203(b)(8) of the Interstate Commerce Act, its interpretation in this case was incorrect.

The commercial zone exemption of the Interstate Commerce Act, Section 203(b)(8), imposes three basic requirements for exemption: (1) that the transportation be within an established commercial zone; (2) that the carrier be engaged in such transportation over regular or irregular routes over the entire length of such interstate route or routes, and (3) that the carrier's operations be in accordance with the laws of each state having jurisdiction, in this case Virginia and the District of Columbia.

It is undisputed that the routes which Warrenner is authorized to traverse in the State of Virginia and his District of Columbia operations are all within the Washington, D.C. commercial zone. See Washington, D. C. Commercial Zone, 54 M.C.C. 797 (1952)

It is not disputed that Warrenner was lawfully engaged in the territory of the District of Columbia in irregular route charter and sightseeing operations. (Comm. Index No. 22, p. 3) It is equally undisputed that his Virginia certificates, obtained in 1959 well before the grandfather date, authorized him to operate a sightseeing service between "places mentioned and over routes described in Appendix A attached to and made a part of this certificate." (Emphasis supplied) Among the places mentioned in each certificate is "south end of the 14th Street Bridge" which is the boundary line between the State of Virginia and the District of Columbia. (Comm. Index Item 1)

Finally it is not disputed that Warrenner actually operated at grandfather date over the entire length of such interstate routes.

The Transit Commission, however, interpolates into the three

requirements of Section 203(b)(8) for qualification for exemption a fourth requirement not found in the statute that the authority relied on from each jurisdiction within the commercial zone be exactly corresponding or identical in nature. It imports this fourth requirement into the statute because, we submit, of an erroneous interpretation which it has placed on the Interstate Commerce Commission's decision in A.B.& W. Transit Company v. D. C. Transit System, Inc., 83 M.C.C. 547 (1960).

In the A.B.& W. Transit case the A.B.& W. Transit Company complained to the Commission that D. C. Transit was unlawfully conducting passenger operations between points in Virginia within the Washington, D. C. commercial zone and the District of Columbia, without having obtained the required certificates. 2/ D. C. Transit's defense was that its passenger operations within the commercial zone were exempt from certificate requirement under Section 203(b)(8). Its Virginia intrastate permit authorized it to engage in charter operations -- not sightseeing operations. Its District of Columbia operations were primarily mass transportation operations. The Commission noted that "Not a shred of evidence was adduced in the instant proceeding to show that defendant is lawfully engaged in any charter operations in Virginia under its intrastate authority." Hence it could not be said that D. C. Transit was operating "over the entire length of such route or routes" as required to qualify under the exemption provision.

2/ It should be noted that the A.B.& W. Transit Company case was decided more than 18 months after Warrenner had begun his Virginia operation (February, 1959 versus October 5, 1960). Whatever interpretation may now be given this case, it cannot reasonably be claimed that Warrenner's commencement of operations was not in good faith.

But the Commission went farther and said that even if it were assumed that D.C. Transit had actually operated under its intrastate authority, the interstate special operations performed by D.C. Transit in the Virginia portion of the Washington commercial zone did not correspond to the charter service defendant was authorized to conduct in intrastate commerce. It held that the exemption in question is applicable only "if such carriers are lawfully engaged in 'corresponding' intrastate passenger operations over the entire length of the interstate route or routes involved." It said that to hold otherwise would permit the defendant to engage in the mass transportation of passengers between Virginia and the District of Columbia so long as it could show that it was lawfully engaged in charter operations. Such a ruling would open the door wide to "destructive competitive practices" which should not be permitted.

Noting that in Warrenner's earlier 1958 case before the Interstate Commerce Commission it had affirmatively found that D.C. Transit's Virginia intrastate permit enabled it to transport passengers under the exemption in Section 203(b)(8), it reversed this finding with the observation that the fact that D.C. Transit's Virginia authority was charter authority was "not recognized in the Warrenner case."

From the foregoing review of the A.B.& W. case, it seems apparent that the Interstate Commerce Commission used the word "corresponding" in relation to the requirement of the statute that the operations involved be conducted "over the entire length of such interstate route or routes." Its major concern was with the possibility that charter authority could be stretched to permit a mass transportation carrier to invade the Virginia area with a mass transportation service. It found that it was unreasonable under the exemption

proviso to link charter authority not shown to have been used over the entire length of interstate routes with mass transportation operations, or passenger transportation on an individual fare basis.

In the present case, however, the type of passenger service conducted by Warrenner in both the District of Columbia and the State of Virginia is identical: in each jurisdiction and in accordance with the laws of each jurisdiction it is conducting an individual fare, sightseeing service. The fact that in the District of Columbia the service is over an "irregular route"; whereas in the State of Virginia the authority is for a "regular route" operation, cannot make the two authorities any less "corresponding" because the proviso itself refers to "regular or irregular route or routes."

We submit that since the authority Warrenner held in each jurisdiction was sightseeing authority, he qualified for exemption under Section 203(b)(8).

II. The Commission erred in finding that Warrenner's interstate sightseeing operations were not bona fide because such operations were not lawfully engaged in.

The fundamental error committed by the Commission is its insistence on equating the term "bona fide" as used in Section 4(a) of the Compact with the term "lawful." It seems to have been led into this error primarily as a result of a mistaken interpretation of this Court's decision in Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964), even though in its first decision herein (Comm. Index Item 20, Order No. 342, March 9, 1964) it had reached a different and correct conclusion as to the meaning of "bona fide."

In Order No. 342 the Transit Commission held that it need not determine whether Warrenner's two intrastate operations were "corresponding"

and/or whether they could be tacked together to qualify under the commercial zone exemption. It said:

> "Even if Warrenner's position is wrong legally, and we are not prepared to say that it is, we are of the opinion that Warrenner began the operation in good faith under 'color' of authority; that his movements were open and undisguised and the transportation was rendered in his own vehicles, clearly painted, marked and identified as belonging to him, and therefore that he was bona fide engaged in the transportation hereinafter authorized on March 22, 1961." (Order No. 342, p. 3) (Emphasis supplied)

But on reconsideration without taking any further evidence, the Transit Commission completely reverses itself and holds that a carrier is entitled to be "grandfathered" only if legally and in good faith engaged in the transportation on the critical date. It asserts that this was the holding of this Court in the Montgomery Charter case and it is not only bound by this interpretation, but concurs in it.

We submit that Montgomery Charter clearly does not support the Commission's conclusion. All that this Court said in Montgomery Charter, as we read the decision, is that if certain operations are lawful, then the Transit Commission is precluded under the Compact from finding that they have not been conducted in good faith. At issue in Montgomery Charter was an interpretation of the law -- the Commission gave the law one interpretation, and the Court gave it another. It does not follow at all from this decision that an operation which may have been unlawful in part (although not found to have been so by the appropriate regulatory bodies), cannot have been conducted in good faith. In other words, Montgomery Charter stands only for the proposition that lawful operations necessarily are bona fide operations; it does not stand for the obverse proposition that bona fide operations, to qualify under the Compact, must be lawful operations.

Perhaps sensing that it had misinterpreted Montgomery Charter, the Commission's decision on reconsideration advances a second reason for not having followed Interstate Commerce Commission interpretations of the term "bona fide." It states that the Commission was not created "to give birth to new operations through legal technicalities stemming from the transition of regulatory authority to this Commission," and that the "situation is unlike the situation confronting the Interstate Commerce Commission when it was created." Conceding that "the grandfather provisions of the Compact and the Interstate Commerce Act are very similar," the Transit Commission nevertheless concludes that "the difference in circumstances justifies different interpretations." (Comm. Index Item 22, Order No. 384, p. 5-6)

We submit that there is absolutely no logical or legal justification for applying different legal tests to the term "bona fide" as used in the grandfather provisions of the Interstate Commerce Act and as used in paragraph 4(a) of the Compact. As noted above, in its first decision in this case the Transit Commission applied the conventional Interstate Commerce definition of bona fide as meaning operations begun in good faith under "color" of authority which were openly conducted without evasion or subterfuge. Warrenner's operations can hardly be described as "new operations"; he had been conducting them openly since February, 1959 (almost five years), ever since he had received his Virginia certificates. It is also quite significant that two of the protestants, D.C. Transit Co., Inc. and Washington, Virginia and Maryland Coach Co., Inc., concede that Interstate Commerce Commission experience is relevant. At page 21 of their brief on reconsideration (Comm. Index Item 16) they say:

> "When comparing the sections of the Washington Metropolitan Area Transit Regulation Compact and the Interstate Commerce Act of 1935, it is evident that it was the intent of the legislators that this Commission's Act and the section in question be modeled after the Interstate Commerce Act. The words are fairly identical and for all intents and purposes it can be said that the meaning is the same."

In this context, therefore, we turn to the first important decision of the Interstate Commerce Commission interpreting the meaning of the term "bona fide" as used in the Motor Carrier Act of 1935. In Slagle Contract Carrier Application, 2 M.C.C. 127 (1937), protestants opposed the grant of grandfather authority to an applicant on the ground that the carrier at grandfather date was not in compliance with the laws of several states through which he was operating. In discussing the meaning of "bona fide," the Commission said in Slagle that even "where the fact of noncompliance with State laws is admitted by an applicant or properly proved to us, we cannot accept protestants' contention that this fact alone requires a denial of an application under the 'grandfather clause.'" It quoted with approval a Supreme Court definition of "bona fide" going back to Ware v. Hylton, 3 U.S. 199, 241, which reads:

> "Bona fide is a legal, technical expression; and the law of Great Britain and this country has annexed a certain idea to it. It is a term used in statutes in England, and in Acts of Assembly of all the States, and signifies a thing done really, with a good faith, without fraud, or deceit, or collusion, or trust."

It then concluded that the test of "bona fide" is not the legality of the operations, but whether they were "openly conducted, without any element of pretense, disguise, or concealment, and in such a manner as to indicate a real intent to conduct and maintain a transportation business." In fact, the Commission said, where actual operations on the critical date have been proved,

"we think we may fairly assume that they were 'bona fide' unless the contrary is shown." It placed the burden of proof of lack of good faith "upon protestants having knowledge of the operations." Finally, the Commission flatly held that the term bona fide as used in the Act "does not mean that an operator must prove compliance with State Laws in his operations."

The definition of "bona fide" in the Slagle case has been consistently followed by the Interstate Commerce Commission in many later decisions. For example, in Hillier Storage Co., 42 M.C.C. 185, a representative of the Public Service Commission of Wisconsin advised the Interstate Commerce Commission that the grandfather applicant did not have a permit from that State on the grandfather date and therefore his operations in Wisconsin were not bona fide. The Commission said:

> "Applicants' operations in Wisconsin have been conducted openly and in good faith. We conclude that lack of bona fides has not been shown. See Alton R. Co. v. United States, 315 U.S. 15."

In Jackson-Strickland Transportation Co. Inc., 42 M.C.C. 133 (1943), a case directly analogous to the present case, there was evidence that applicant had operated in excess of authority granted him by the State of Texas and that his drivers had been arrested for operating without appropriate authority. The Commission said:

> "Protestants rely upon McDonald v. Thompson, 305 U.S. 263, to support their contention that operations over routes other than those set forth in the Texas certificate were not bona fide. We cannot agree that the principle set forth in the McDonald case is applicable here. In this proceeding, Jackson and applicant had some operating authority and merely exceeded the rights granted. In the McDonald case there was an absolute defiance of an order of the Texas commission. Here there is no evidence that Jackson and applicant were ordered to cease operations or that since January 1, 1935 their trucks were stopped and the drivers arrested in Texas for failure to have adequate operating authority.

> Nor does the State of Texas oppose the application. Operations by both Jackson and applicant were not characterized by elements of fraud, deceit or subterfuge." (p. 137)

Almost every one of these observations applies to Warrenner in this case. Warrenner had some authority from the State of Virginia, and at worst, even if we concede the right of the Transit Commission to interpret and apply State law and the Interstate Commerce Act, he may have exceeded the rights granted. There was no absolute defiance of any order of the Corporation Commission or the Interstate Commerce Commission because there was never any complaint made to those agencies or order issued by them against Warrenner. Warrenner was never ordered to cease any of the operations he instituted in 1959 after receiving authority from the State of Virginia. The State of Virginia did not appear and oppose the application. Warrenner operated openly and without subterfuge.

The distinction between operations conducted in strict compliance with applicable laws and operations conducted in defiance of those laws is well illustrated by the two Supreme Court decisions cited in the above excerpts from the Hillier and Jackson-Strickland cases.

In McDonald v. Thompson, 305 U.S. 263, 62 S.Ct. 432 (1938) the Supreme Court said that the expression "in bona fide operation" did not mean mere physical operation, but suggests absence of evasion and implies compliance with State laws. There the carrier had applied for state authority, the authority had been denied, the carrier had then gone into court to overrule the Texas regulatory body and had lost. He had then continued to operate within the State of Texas in defiance of both the affirmative action of the state regulatory body and of the court order sustaining the state agency. Hence, when the Supreme Court said that the "grandfather" provisions

did not extend to operating as a common carrier on public highways of a state "in defiance of its laws," it was clearly dealing with a situation where the appropriate state authorities had already acted and the carrier had admitted operation in violation of state law.

That the McDonald decision was not intended to go any further than a case of actual defiance of state law as interpreted and applied by the state regulatory body with statutory jurisdiction to make such a finding, is made quite clear in the subsequent Supreme Court decision of Alton R. Co. v. United States, 315 U.S. 15 (1942). There the protestants argued that the grandfather applicant was not entitled to a certificate for the State of Oregon because under state law his operations had been those of a contract carrier whereas he sought common carrier authority from the Interstate Commerce Commission; and that he was not entitled to a certificate for the State of Nebraska because he had admitted violation of Nebraska law in his testimony at hearing. The Supreme Court said:

> "The expression 'bona fide operation' plainly 'does not extend to one operating as a common carrier on public highways of a state in defiance of its laws.' McDonald v. Thompson 305 U.S. 263. Congress, however, has not conditioned rights under the commerce clause on compliance with state laws. Their violation is material only insofar as it may be relevant to establishing an absence of bona fide operation. Infractions of state law, however, may be innocent or minor. They may or may not concern the right to operate in the State. Furthermore, the status of a carrier under state law may or may not be identical with his status as a common or contract carrier under the Motor Carrier Act. The question whether his operation in a particular state was bona fide is a question of fact for the Commission to determine. Such operations might well be in good faith although state laws were infracted. And the fact that an applicant may have to make his peace with State authorities does not necessarily mean that his rights under the grandfather clauses should be denied or withheld. See Slagle, 2 M.C.C. 127." (Emphasis supplied)

It is especially noteworthy that the Supreme Court cited with approval the 1937 Interstate Commerce Commission decision in Slagle, supra.

Since none of the protestants presented any evidence at all, much less evidence of bad faith, other than the argument that Warrenner's operations were not within the scope of the commercial zone exemption, it seems apparent that the sole basis for the Commission's finding of bad faith is its belief that Warrenner made a mistake of law, and a mistake of law, incidentally, if it may be deemed a mistake, which the Commission itself made in its earlier order. We do not question the good faith of the Commission in reaching the conclusions it reached in either Order No. 342 or Order No. 383; nor do we question the good faith of the Interstate Commerce Commission in finding in the Warrenner case, supra, that D.C. Transit was properly operating under the commercial zone exemption and then subsequently finding two years later in the A.B.& W. Transit Company case, supra, that the same operations did not qualify under the commercial zone exemption. But by like token, we find it difficult to conclude that a mistake of law by a non-lawyer constitutes substantial evidence of bad faith.

CONCLUSION

Appellant submits that Transit Commission Orders No. 384 and 403 should be set aside and vacated and the Commission should be directed to reinstate its original order herein, Order 342.

Respectfully submitted,

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BRIEF FOR RESPONDENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,991

RAYMOND WARRENNER, T/A
BLUE LINE SIGHTSEEING COMPANY,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent,

D. C. TRANSIT SYSTEM, INC.,

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC.,

ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY,

THE GRAY LINE, INC.,

Intervenors.

On Appeal from the Washington Metropolitan
Area Transit Commission

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STATEMENT OF QUESTIONS PRESENTED

The parties to this proceeding by prehearing stipulation, filed herein and approved by Order of this Court dated December 10, 1964, have stipulated the issues of this proceeding as follows:

1. Whether the Commission erred in finding that applicant's interstate operations were unlawful?

2. Whether the Commission erred in finding that applicant's interstate operations were not bona fide because such operations were not lawfully engaged in?

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,991

RAYMOND WARRENNER, T/A
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v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

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WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC.,

ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY,

THE GRAY LINE INC.,

Intervenors.

ON APPEAL FROM THE WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION

BRIEF FOR RESPONDENT

COUNTERSTATEMENT OF THE CASE

Pursuant to the provisions of Title II, Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact (hereinafter called "Compact"), Raymond Warrenner, t/a Blue Line Sightseeing Company, seasonably filed a "grandfather" application with the Washington Metropolitan Area Transit Commission (hereinafter called "Commission"), seeking a certificate of public convenience and necessity to authorize transportation of passengers for hire (1) in sightseeing operations between points and places within the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. Notice of the filing of the application was published as required by the Commission. Protests to the granting of the application were filed by the A.B.& W. Transit Company, W.V.& M. Coach Company, and D. C. Transit System, Inc.

Several informal conferences were held, but the issues raised by the application and the protests were not resolved. The application was then the subject of a formal hearing on May 15, 1963. The transcript comprises 113 pages, and 1 exhibit consisting of 18 pages.

The applicant and two others testified in behalf of the application. There was no evidence in opposition thereto except the submission of a transcript of a hearing before the State Corporation Commission of the Commonwealth of Virginia by counsel for the A.B.& W. Transit Company without objection.

The protestants did not contest the applicant's right to authority for special and charter operations between points in the District of Columbia. Such transportation was exempt from certificate requirements prior to the effective date of the Compact, and it was established that the applicant was engaged in such transportation prior to the effective date of the Compact. Nor did the protestants contest that the applicant was in fact operating motor buses (i.e. vehicles designed to carry nine or more passengers) in special operations between points in the District of Columbia and points in Northern Virginia.

The evidence showed that Warrenner conducted sightseeing business in limousines for a long period of time up to and including 1958. In 1958 the Interstate Commerce Commission denied his application for authority to transport passengers in special sightseeing operations between Washington, D. C., and points in Virginia and Maryland. Raymond Warrenner Common Carrier Application, 77 M.C.C. 213 (July 17, 1958). In that decision the Interstate Commerce Commission admonished applicant to discontinue all operations to or from Virginia or Maryland except those which would come within either the taxicab or commercial zone exemptions. In 1959 Warrenner applied for and received from the State Corporation Commission of Virginia two certificates which authorized regular route, round-trip only, sightseeing operations. These certificates were issued pursuant to the provision of Virginia Code 56-388.41. In October 1960 the Interstate Commerce Commission handed down a

decision which modified the Warrenner decision. It held in A.B.& W. Transit Company v. D. C. Transit System, Inc., 83 M.C.C. 547 (1960), that the commercial zone exemption applied only if a carrier is lawfully engaged in "corresponding" intrastate passenger operations.

By Order No. 342, the Commission approved most of the application and granted a certificate authorizing intrastate charter and special operations within the District of Columbia and interstate special operations in sightseeing or pleasure tours from points and places in the District of Columbia; the City of Alexandria; and Arlington County, Virginia, to points and places in the District of Columbia; the City of Alexandria; Arlington County; and Mt. Vernon, Fairfax County, Virginia, and return.

The protestants filed for reconsideration pursuant to Article XII, Section 16 of the Compact. Reconsideration was granted and the Commission ordered oral argument before the full Commission.

By Order No. 384, served September 11, 1964, the Commission reversed that portion of its prior decision which related to interstate operations between the District of Columbia and Northern Virginia.

In arriving at this decision the Commission held that the commercial zone exemption provided by Section 203(b)(8) of the Interstate Commerce Act applies only to situations where the intrastate operations in the two jurisdictions are "corresponding." It found that the applicant's District of Columbia rights were for irregular route, charter and sightseeing operations and that applicant's

Virginia intrastate rights were restricted regular route, round-trip, sightseeing only and thus not "corresponding."

It pointed out that the Commission was created to consolidate multi-agency regulation into one regulatory body. That the intent of the "grandfather" clause was to preserve the existing rights of legitimate carriers -- not to give birth to new operations through legal technicalities stemming from the transition of regulatory authority to this Commission. The Commission further found that applicant was no stranger to motor carrier regulation, and that the Interstate Commerce Commission decisions in his own case and the A.B.& W. Transit Company case modifying his decision should have served to put him on notice of the legal requirements of the commercial zone exemption, and that thus the Commission could not conclude Warrenner was bona fide engaged in interstate operations on the effective date. The prior order was set aside and the applicant granted charter and special operations authority within the District of Columbia.

An application for reconsideration was filed by the applicant, and was denied on October 27, 1964, by Order No. 403.

STATUTES INVOLVED

1. Washington Metropolitan Area Transit Regulation Compact, Title II, Article XII, Section 4(a):

> "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation;

provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful."

2. Interstate Commerce Act, Part II, Section 203(b):

"Nothing in this chapter . . . shall be construed to include . . . (8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction;"

3. Virginia Code of 1950, Chapter 12.3, Section 56-338.41:

"A certificate issued under this Chapter shall authorize the holder named in the certificate to transport sightseers from the point of origin named in the certificate over regular routes to the points of interest named in the certificate and back to the point of origin . . . . Passengers shall be transported only on round-trips without stopover privileges . . . ."

SUMMARY OF ARGUMENT

In determining the bona fideness of petitioner's transportation it was proper for the Commission to consider relevant federal and state laws and the extent of compliance or lack thereof with laws relating to the right to operate.

In order to make such a determination the Commission necessarily had to determine whether petitioner's interstate transportation qualified under the exemption provided by Section 203(b)(8) of the Interstate Commerce Act. The Commission's interpretation is sound and consistent with prior decisions of the Interstate Commerce Commission.

ARGUMENT

I. THE COMMISSION DID NOT ERR IN FINDING THAT THE INTERSTATE OPERATIONS WERE UNLAWFUL.

Despite the petitioner's claims that the Transit Commission has usurped the jurisdiction of both the Interstate Commerce Commission and the State Corporation Commission of Virginia, the hard fact remains that the legislatures placed the responsibility of determining the bona fideness of "grandfather" claims on the Washington Metropolitan Area Transit Commission. That prior action or decisions by those two regulatory agencies would have made the Commission's determination easier is not denied. The issue was fairly raised in the proceeding before the Commission by the protestants that Warrenner was not bona fide engaged in interstate operations because such operations were not conducted pursuant to a certificate of public convenience and necessity from the Interstate Commerce Commission, nor exempt therefrom under Section 203(b)(8).

It is urged that the Commission should have refused to inquire into the legality of the transportation. The Commission could not, however, avoid its duty so irresponsibly. And once the Compact became effective, the Interstate Commerce Commission lost jurisdiction over operations solely within the Metropolitan District so that it could not have made a determination, even had such a request been made. The Interstate Commerce Commission has acknowledged this fact. See Increased Fares -- Between Washington, D. C. and Points in Virginia; I.& S. No. M-14400, 14 Fed. Carr. Cas. Par. 35,187. Petitioner's view would leave the Commission with the

limited scope of determining only actual operations and forbidden to inquire into the bona fideness of those operations.

Petitioner's operations within the District of Columbia consisted of charter and sightseeing movements, beginning anywhere in the District of Columbia and operated to any point there over irregular routes.

In Virginia, however, petitioner's operations were rigidly regulated and he could originate his passengers only at two motels (neither of which is contiguous with the District of Columbia) and transport them only to the places named and only over the routes prescribed in the Virginia certificates. While sightseeing was authorized intrastate in each jurisdiction, all comparison stops there. As the Interstate Commerce Commission noted,

> "The exemption . . . is clearly intended to permit intrastate passenger carriers to complement their intrastate operations by transporting interstate passengers between the same points . . . and it only applies if such carriers are lawfully engaged in 'corresponding' intrastate passenger operations over the entire length of the interstate route or routes involved." A.B.& W. Transit Company v. D. C. Transit System, Inc., supra, at 552.

The petitioner errs when it claims (Brief, p. 18) that the type of service in each state is identical. Under the Virginia certificate, no one may get on the bus except at the two specified motels -- and all service is round-trip only. How, then, is the intra-Virginia service to be "complemented" by transporting interstate passengers between the same points? As the "same points" are one and the same, beginning and ending -- i.e. the two motels --

then the interstate operations would have to begin and end at the same motels. Thus, it is impossible to complement the Virginia authority unless some way exists to tie in that area of Virginia between the motels and the District of Columbia and since the petitioner has no other Virginia authority, that tie-in is impossible and the hiatus cannot be bridged. Consequently, the petitioner could not be "lawfully engaged . . . over the entire length of the interstate route."

The two intrastate operations cannot be considered "corresponding." Contrary to petitioner's allegations, the "corresponding" theory imputed to Section 203(b)(8) did not originate with the Commission, but rather with the Interstate Commerce Commission.

II. THE LEGALITY OF PRIOR OPERATIONS IS A MATERIAL ELEMENT IN DETERMINING BONA FIDENESS.

The Commission recognized in its Order that in enacting the Compact the legislatures were not attempting to create a regulated industry out of a previously unrestricted business. The Commission acknowledged that the situation facing it was unlike that which confronted the Interstate Commerce Commission when the Motor Carrier Act was created. The Interstate Commerce Commission recognized that prior to the passage of the Motor Carrier Act, "most of the states had undertaken to regulate to some extent motor carriers engaged in intrastate commerce, and some had undertaken to extend the regulation in various respects to those engaged in

interstate or foreign commerce. There were a great variety of such laws and like variations in enforcement. Enforcement was vigorous in some states and lax in others, and, as was natural, laxity was more prevalent as to interstate operations." Slagle Contract Carrier Application, 2 M.C.C. 127, 138.

In 1961, however, an entirely different picture emerged. The transportation services prior to the enactment of the Compact had been vigorously regulated by three state commissions and the federal agency for twenty-five years. It was a field "where competition has heretofore been strictly controlled." A.B.& W. Transit Company v. D. C. Transit System, Inc., supra at 552. Therefore, the lawfulness of an operation, insofar as the right to operate (as distinguished from minor or other non-operating infractions), is, as found by the Commission, a material element of the term bona fide. The Supreme Court has stated that the question of bona fideness is a question of fact for the Commission to determine. Alton R. Co. v. United States, 315 U. S. 15 (1942).

This Commission is not required to follow the decisional process of the Interstate Commerce Commission, but is free to make its own decisions. "It is . . . to be reasonably expected that the transit commission . . . may establish . . . a body of case-by-case decisions that will differ from those of public bodies regulating transportation." A.B.& W. Transit Company v. Washington Metropolitan Area Transit Commission, 323 F. 2d 777, 51 PUR 3d 292, 294.

Therefore, because of the differences, discussed above, that existed previous to the creation of the Motor Carrier Act and

the Compact, it was not unreasonable for the Commission to consider the legality of prior operations to be a major and material factor in determining whether one was bona fide engaged in such transportation. The laws considered were the very basis of the right to operate prior to the effective date of the Compact. They cannot be ignored. This Court has said that a carrier was entitled to be "grandfathered" if it was "legally and in good faith" engaged in transportation. Montgomery Charter Service, Inc., v. Washington Metropolitan Area Transit Commission, 325 F. 2d 230 (1964). Petitioner was not legally engaged in interstate operations.

CONCLUSION

Respondent submits that the Orders complained of are correct, that the law and the facts have been correctly determined and applied, that substantial parity was rendered to the petitioner, and that the Orders should be affirmed and the petition denied.

Respectfully submitted

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AREA TRANSIT COMMISSION

Date: January 15, 1965

BRIEF FOR INTERVENORS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,991

RAYMOND WARRENER
t/a Blue Line Sight-seeing Company

Petitioner

vs.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

Respondent

On Petition To Review and Set Aside Orders Of The Washington Metropolitan Area Transit Commission

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,991

RAYMOND WARRENER
t/a Blue Line Sight-
seeing Company

Petitioner,

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WASHINGTON METROPOLITAN
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Respondent.

ON PETITION TO REVIEW AND SET ASIDE
ORDERS OF THE WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION

Brief for Intervenors
D. C. Transit System, Inc.
A. B. & W. Transit Company
The Gray Line, Inc.
Diamond Tours, Inc.
Washington, Virginia & Maryland
Coach Company, Inc.

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COUNTER-STATEMENT OF THE CASE

Raymond Warrener, t/a Blue Line Sightseeing Company, filed with the Washington Metropolitan Area Transit Commission an application for a "grandfather" certificate pursuant to Section 4(a), Article XII of the Washington Metropolitan Area Transit Regulation Compact (hereinafter referred to as "Compact"), to authorize the continuation of the transportation of passengers allegedly engaged in on March 22, 1961, the effective date of the Compact. Specifically, the applicant sought authority to transport sightseeing passengers for hire (1) in special operations between points and places in the Washington Metropolitan Area Transit District, and (2) in charter operations within the District of Columbia. The application was protested by certificated intervenors herein.

A formal hearing on the application was held before the Washington Metropolitan Area Transit Commission. Following the hearing, the Commission by Order No. 342 approved a portion of the application and granted a certificate of public convenience and necessity. The Commission specifically noted that protestants did not contest applicant's right to a certificate of public convenience authorizing special and charter operations in the transportation of sightseeing passengers between

points in the District of Columbia. Protestants, however, took the position that applicant was not bona fide engaged in motor bus operations in interstate commerce between points in the District of Columbia and points in Northern Virginia on the effective date of the Compact. It was on this issue that the protestants filed petitions for reconsideration of Commission Order No. 342. By Order No. 351 the Commission granted reconsideration and ordered oral argument before the full Commission, which argument was held May 22, 1964. Following oral argument and reconsideration by the Commission based on the entire record and oral argument, the Commission issued Order No. 384, serving same on September 11, 1964. By Order No. 384 Raymond Warrenner was granted a certificate of public convenience and necessity authorizing the following operations:

IRREGULAR ROUTES:

(a) Charter Operations:
Between points within the District of Columbia.

(b) Special Operations:

Sightseeing or pleasure tours between points within the District of Columbia.

In all other respects the Commission denied Raymond Warrener's application.

On October 9, 1964, Warrener, by his counsel, filed a petition for reconsideration of Order No. 384 accompanied with a request for oral argument. Protestants, on October 23, 1964, by their counsel, urged the Commission to deny the requested relief.

On October 27, 1964, by Order No. 403, Warrener's petition of October 9, 1964, was fully and completely denied. That Order provided by its terms that it would become effective on November 1, 1964.

On October 30, 1964, Warrener, by his counsel, requested the Commission to stay the effective date of its Order No. 403 for a period of three months from November 1, 1964, to February 1, 1965 for four assigned reasons.

Protestants opposed Warrener's request for a stay before the Commission. The Commission by Order No. 410, dated November 27, 1964, denied Warrener's motion to stay. On November 10, 1964, Warrener, by his counsel, petitioned this Court for a review of Orders 384 and 403 of the Washington Metropolitan Area Transit Commission. On December 1, 1964, petitioner filed with the Commission a second petition for temporary stay of effective date of Order No. 403. Thereafter, the Commission issued Order No. 416 served December 1, 1964, staying the effectiveness of Order No. 403 until December 15, 1964, pending the determination by this Court of petitioner's motion to stay Order No. 403. Intervenors thereafter timely filed in this Court their motions to intervene. Motions for leave to intervene were granted by this Court on the 10th day of December, 1964. On December 15, 1964, this Court granted petitioner's motion to stay pending review by this Court.

STATUTES AND REGULATIONS INVOLVED

This case involves the applicability of the Interstate Commerce Act, Section 203 (b)(8) (49 Stat. 543); Public Law 87-767, Section 4(a), Article XII, Washington Metropolitan Area Transit Regulation Compact (76 Stat. 764); Code of Virginia, Section 56-338.41, Ch. 12.3, 1950. The relevant provisions of these statutes are set forth in the Appendix.

STATEMENT OF QUESTIONS PRESENTED

The parties to this proceeding by pre-hearing stipulation filed herein and approved by order of this Court, dated December 10, 1964, have stipulated the issues of this proceeding as follows:

1. Whether the Commission erred in finding that applicant's interstate operations were unlawful?

2. Whether the Commission erred in finding that applicant's interstate operations were not bona fide because such operations were not lawfully engaged in?

ARGUMENT

I

THE WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION WAS CORRECT IN DETERMINING THAT THE PETITIONER'S INTERSTATE OPERATIONS ON THE EFFECTIVE DATE OF THE COMPACT WERE UNLAWFUL

The Washington Metropolitan Area Transit Commission (hereinafter "Commission") specifically found that in 1958 petitioner had filed an application before the Interstate Commerce Commission for a certificate of public convenience and necessity to authorize sightseeing operations in the Washington Metropolitan Area. The Commission noted that on July 17, 1958, the Interstate Commerce Commission denied petitioner's application, and, in addition, had held that petitioner could not engage in sightseeing operations in interstate commerce in the Washington Commercial Zone under Section 203(b)(8) of the Interstate Commerce Act because he did not have the requisite intrastate authority from the Commonwealth of Virginia. Further, the Transit Commission specifically noted that after this finding by the Interstate Commerce Commission, petitioner sought and received from the State Corporation Commission of Virginia two Certificates of Public Convenience and Necessity authorizing restricted, regular route, round trip only, sightseeing operations from two motels in Virginia. The Commission correctly concluded that the two intrastate operations conducted by petitioner

herein were not "corresponding" with an irregular route, territorial right on the one hand, and a restricted, regular route, round trip only right, on the other hand.

In reaching its decision that petitioner's two intrastate operations were not "corresponding", the Commission relied on A. B. & W. Transit Company vs. D. C. Transit System, Inc., 83 MCC 547, 14 Fed. Carr. Cases, Par. 35,000. Petitioner in its brief has attempted to distinguish the A. B. & W. case on its facts from the situation presented to the Commission in this proceeding.

In this attempt petitioner errs in incorrectly theorizing that his operations in the District of Columbia and intrastate operations in the Commonwealth of Virginia were "corresponding" in that they were both individual fare sightseeing operations. Section 203(b)(8) of the Interstate Commerce Act by use of the following language creates a specific exemption:

> "The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between continuous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone and provided that the motor carrier engaged in such transportation of passengers over regular or irregular

> route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction." [Emphasis supplied]

It is apparent that Section 203(b)(8) of the Interstate Commerce Act did not contemplate an artificial distinction based upon the manner of collecting fares. Rather Section 203(b)(8) makes the type of actual physical operation determinative of the question of exemption or non-exemption. Petitioner had received from the State Corporation Commission of Virginia two Certificates of Public Convenience and Necessity authorizing restricted, regular route, round-trip only, sightseeing operations from two motels in Virginia. The Certificates were titled S-5 and S-6. Section 56-338.41 of the Code of Virginia, quoted infra, specifically defines restricted sightseeing operations such as those authorized by Certificates S-5 and S-6.

> § 56-338.41. Certificates. -- A certificate issued under this chapter shall authorize the holder named in the certificate to transport sight-seers from the point of origin named in the certificate over regular routes to the points of interest named in the certificate and back to the point of origin. Only one point of origin shall be named in a certificate. Each passenger shall be issued a ticket on which shall be printed the points of interest and the fare charged

> for the round trip. Passengers shall be transported only on round trips without stopover privileges, and no part of a fare shall be refunded because of a passenger's refusal to complete the round trip. (1956, c. 494.) [Code of Virginia, 1950, Ch. 12.3, Sightseeing Carriers]

Section 56-338.41, supra, of the Code of Virginia declares that passengers shall be transported only on round trips without stop-over privileges. (Emphasis supplied) Therefore, stated in its simplest terms, petitioner could not lawfully perform any service in the Commonwealth of Virginia other than a round trip service and such round trip service could not be lawfully "tacked" as that term has come to have a meaning in the transportation industry, with any other authority that petitioner may have possessed. The term "tacking" contemplates a connection which would permit the flow of traffic through a joinder point. Petitioner did not have an unrestricted joinder point at the 14th Street Bridge, as contended. Passengers picked up by petitioner prior to the 14th Street Bridge could not be discharged at the bridge, nor could the petitioner lawfully accept a passenger originating in the District of Columbia at the 14th Street Bridge, Virginia side, for transportation to any point or place in the Commonwealth of Virginia. It is, therefore, conclusively demonstrated that petitioner could not bring himself within the Section 203(b)(8) exemption of the Interstate Commerce Act. Having failed

to come within the Section 203(b)(8) exemption of the Interstate Commerce Act, petitioner nevertheless carried on interstate operations which were illegal and unlawful.

II

THE COMMISSION DID NOT ERR IN FINDING THAT PETITIONERS INTERSTATE OPERATIONS WERE NOT BONA FIDE BECAUSE SUCH OPERATIONS WERE NOT LAWFULLY ENGAGED IN

Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact provides as follows:

> "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation ---" [Emphasis supplied]

This section of the Compact imposes upon the Commission the affirmative duty to determine whether non-certificated operations conducted prior to the effective date of the Compact, March 22, 1961, were in fact bona fide. In order to make this determination, the Commission, must, and in this case did examine the prior operations of petitioner. The aforenoted language of the Compact and its true import make short shrift of petitioner's spurious argument to the effect that the Commission did

not have the right to determine whether or not petitioner herein came within the Section 203(b)(8) of the Interstate Commerce Act. Petitioner was not regulated by the Interstate Commerce Commission on and prior to March 22, 1961. He was not authorized to carry on interstate operations which would have brought him within the purvue of the Interstate Commerce Commission and its regulations. He had been specifically instructed by the Interstate Commerce Commission to cease and desist from any interstate operations. He held no authority from the State of Maryland. The Commonwealth of Virginia had given him only restricted operating rights within its jurisdiction. The District of Columbia had only licensed his vehicles. Consequently, the Washington Metropolitan Area Transit Commission, not being required to act in a vacuum properly and logically, and as required by the Compact, made a determination as to what exemptions, if any, were applicable to petitioner's interstate operations.

The Commission correctly relied on Montgomery Charter Service, Inc. vs. Washington Metropolitan Area Transit Commission, 325 F. 2d 230 (1964) wherein this Court had stated that a carrier was entitled to be "grandfathered" if it was "legally and in good faith engaged in" the transportation on the critical date. The record before the Commission in the instant case showed that after receiving the two limited Certificates from the Commonwealth

of Virginia petitioner, by and through counsel, attempted to obtain further authority to engage in transportation in the Commonwealth of Virginia, which authority may have provided the basis for an exemption under Section 203(b)(8). The fact is that such further authority was not granted by the Commonwealth of Virginia. Therefore, tacitly and actually, petitioner knew of the limitations of its two circumscribed certificates issued by the Commonwealth of Virginia. Knowing that, he nevertheless continued to operate illegally. On the basis of these facts, and considering this Court's admonition in Montgomery Charter Service, Inc., the Commission was correct in concluding that petitioner did not in fact commence interstate operations between points in the District of Columbia and Virginia, in good faith, and that he was not operating in good faith on the effective date of the Compact.

The facts in the instant case readily distinguish it from Slagle - Contract Carrier Application, 2 MCC 127, 140 (1937), heavily relied on by petitioner. In Slagle confusion existed as to Slagle's contract or common carrier status, and Slagle had commenced partial compliance with state laws some three years before his application. At the time Slagle instituted operations it was in a period before Federal Regulation, confused with respect to interstate transportation by motor vehicle. Here, petitioner had

denial he nevertheless contined to operate within the State of Texas in defiance of both the administrative body and the judicial determination. Clearly, here, petitioner has done the exact same thing, i.e., he has operated in defiance of the Interstate Commerce Commission and of the Commonwealth of Virginia in that he had applied to both bodies for broad authority and had in fact received restricted authority. Despite this denial of broad authority he continued to operate interstate on a broad operational basis with limited authority. The facts in the instant case distinguish it from Alton Railway Company vs. United States, 350 U.S. 15 (1942). Here petitioner not only acted in defiance of the laws of the Commonwealth of Virginia but acted in open defiance of the Interstate Commerce Commission, a Federal regulatory body.

Petitioner cannot color his operations to achieve a bona fide appearance in asserting that such operations were allegedly openly conducted without interference by any regulatory authority. Petitioner seeks to cloak his unauthorized operations in the understandable and inevitable confusion surrounding the transition of regulation of passenger transportation in the Washington Metropolitan District from those agencies formerly entrusted with this responsibility to the Washington Metropolitan Area Transit

been in the transportation business over a period of years; had been specifically told by the Interstate Commerce Commission that he could not operate in interstate commerce under Section 203(b)(8) of the Interstate Commerce Act; knew or should have known that his certificates in the Commonwealth of Virginia were highly restricted. And despite the foregoing, petitioner carried on interstate operations which he knew were illegal.

Again, this Court's attention is respectfully directed to the fact that petitioner herein applied for further authority from the Commonwealth of Virginia after receiving his two restricted sightseeing certificates titled S-5 and S-6. This additional authority was never granted, and yet the refusal did not deter petitioner from carrying on illegal interstate operations. In fact, petitioner herein brings himself within the admonition of the Supreme Court in the case of McDonald vs. Thompson, 305 U.S. 263, 62 S. Ct. 432 (1938). There the Supreme Court said that expression "in bona fide operation" did not mean mere physical operation, but suggests absence of evasion and implies compliance with state laws. In McDonald the carrier had been denied state authority for which he had applied, had thereafter moved for a judicial over-ruling of the administrative order and had lost in that proceeding. Following this administrative and judicial

Commission. The Interstate Commerce Act and the administration thereof by the Interstate Commerce Commission incontestibly establishes that the petitioner did not have authority on the critical "grandfather date" of the Washington Metropolitan Area Transit Regulation Compact to engage in the transportation of persons by motor bus between the District of Columbia, on the one hand, and, on the other, points and places in Northern Virginia within the jurisdiction of that Compact. Upon the enactment of the Compact, and by express provisions thereof, the Interstate Commerce Commission, the District of Columbia Public Utilities Commission, and the Maryland Public Service Commission surrendered, in effect, portions of their jurisdiction and regulation of intrastate and interstate transportation of persons by motor vehicle to the newly legislative created Commission. In these twilight hours of these Regulatory Commissions jurisdiction and before the emergence of the newly created Commission, petitioner conducted, without authority, a service which he now seeks to have this Court consider to be bona fide. The newly created Washington Metropolitan Area Transit Commission was confronted with literally several hundreds of so-called "grandfather applications", including one by the petitioner herein, plus innumerable organizational difficulties which embraced the prescription of reasonable transportation fares

throughout the jurisdiction of the new Commission. It is during these formative days of the new Commission, where its personnel were concerned with the determination of the bona fide character of applicants, that petitioner herein persisted in the conduct of an operation which had an illegitimate birth. The contended failure, therefore, by this Commission to halt the petitioner's unauthorized services must be weighed against the acknowledged fact that the Commission was confronted with an initial task of sizable proportion to determine a large number of "grandfather" applications. To reward petitioner with a certificate for his seeming astuteness to engage in operations, without authority during this organizational period, would be a travesty upon the intent and purpose of the Compact designed to insure a respectable industry within the Washington Metropolitan District.

CONCLUSION

In light of the foregoing these intervenors respectfully submit that the Orders of the Washington Metropolitan Area Transit Commission should be sustained and the petition for review should be denied.

Respectfully submitted,

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A P P E N D I X

Interstate Commerce Act
Section 203(b)(8), 54 Stat. 906, 49 U.S. Code

> The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between continuous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction.

Code of Virginia, 1950
Section 56-338.41, Ch. 12.3

§ 56-338.41. Certificates. --A certificate issued under this chapter shall authorize the holder named in the certificate to transport sight-seers from the point of origin named in the certificate over regular routes to the points of interest named in the certificate and back to the point of origin. Only one point of origin shall be named in a certificate. Each passenger shall be issued a ticket on which shall be printed the points of interest and the fare charged

for the round trip. Passengers ahll be transported only on round trips without stopover privileges, and no part of a fare shall be refunded because of a passenger's refusal to complete the round trip.

Washington Metropolitan Area
Transit Regulation Compact
P.L. 86-794; 74 Stat. 103
Section 4(a), Article XII

No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation ---